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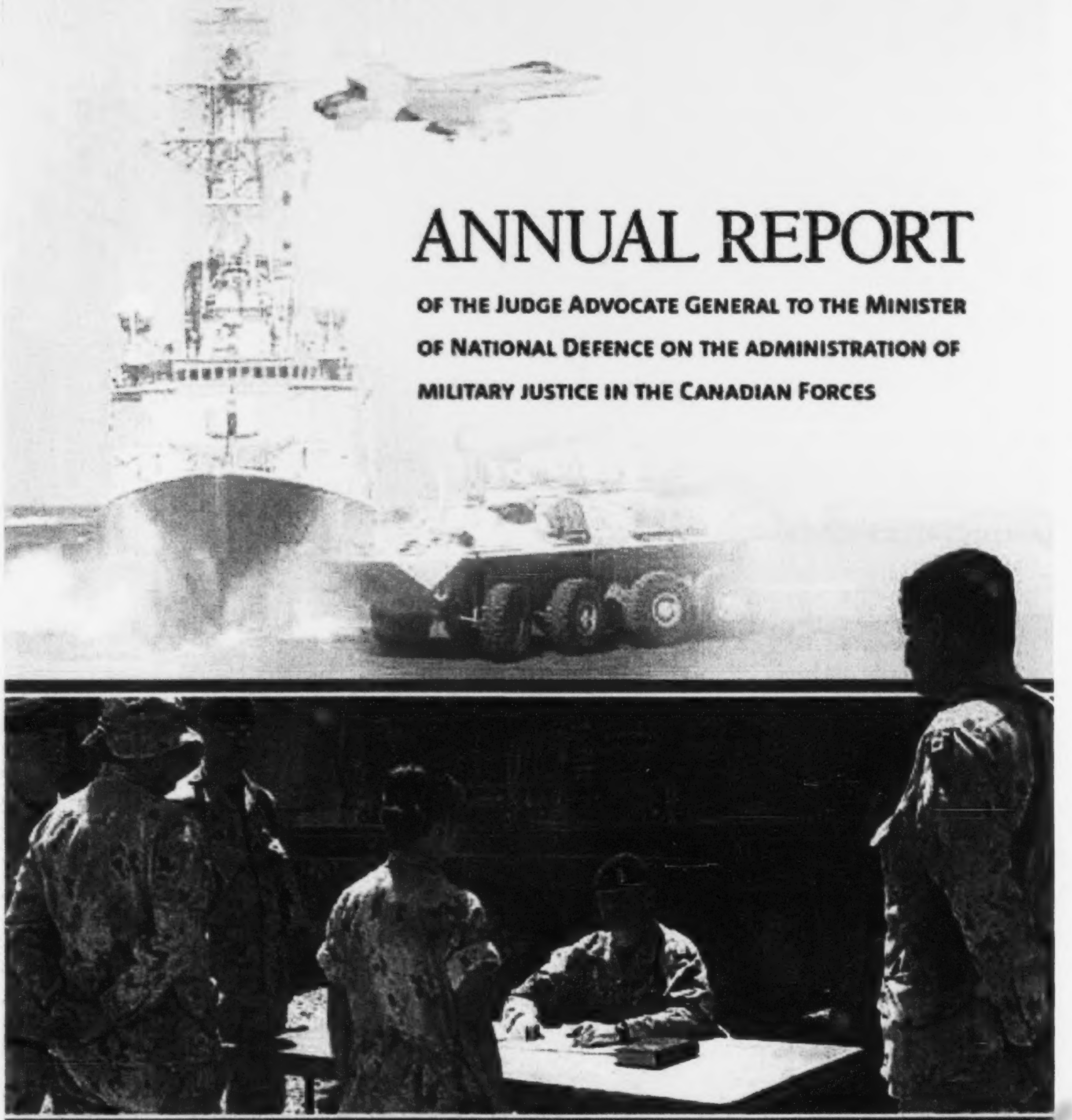

ANNUAL REPORT

OF THE JUDGE ADVOCATE GENERAL TO THE MINISTER OF NATIONAL DEFENCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE CANADIAN FORCES

A REVIEW FROM 1 APRIL 2007 TO 31 MARCH 2008

Office of the Judge Advocate General
Cabinet du juge-avocat général

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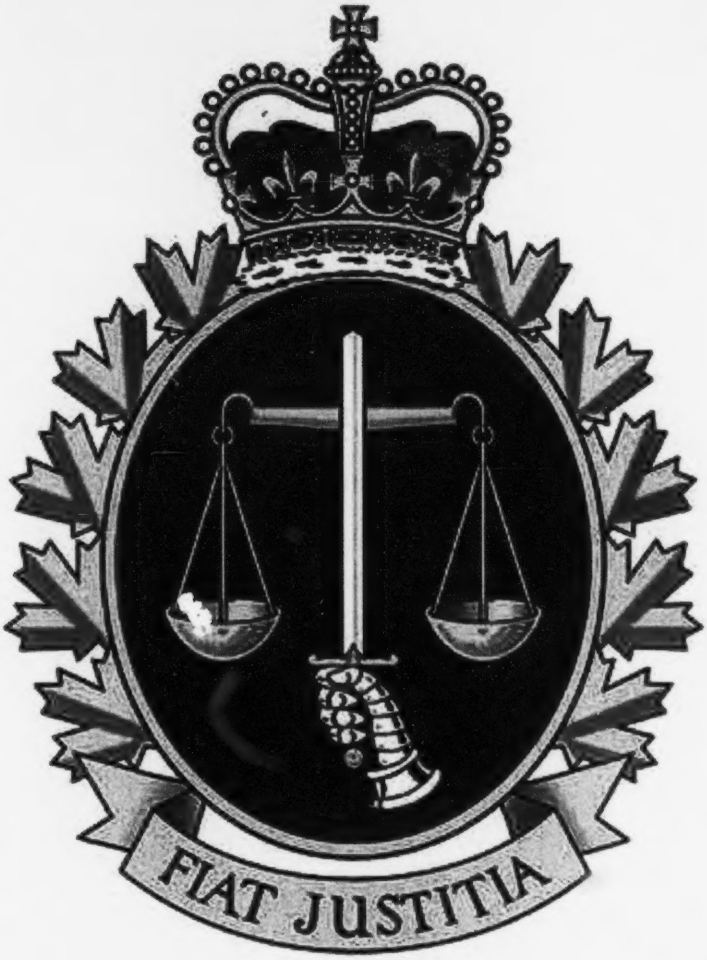
Dear Minister,

It is my honour to present to you the ninth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Forces, made pursuant to section 9.3 of the *National Defence Act*. This Report covers the period 1 April 2007 to 31 March 2008.

Yours truly,

Kenneth W. Watkin, Q.C.
Brigadier-General
Judge Advocate General

Canada



The maple leaves framing the badge of the Canadian Forces Legal Branch represent service to Canada, and the Crown, service to the Sovereign. The dark background of the central device signifies the blindfolded figure of justice, and symbolizes the impartiality of the justice system. Against the background the scales of justice are held aloft on a pointless curtana sword by a mailed right hand. The mailed hand represents military justice, while the pointless sword denotes the mercy that we trust prevails in judgement.

The motto "*FIAT JUSTITIA*" means, "*LET JUSTICE PREVAIL*".

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JUDGE ADVOCATE GENERAL COMMUNIQUÉ

It is an honour and privilege to deliver this, the second annual report to the Minister of National Defence on the administration of military justice since my appointment as Judge Advocate General (JAG) of the Canadian Forces (CF).

As was noted by the Supreme Court of Canada in 1992[1] the safety and well-being of Canadians depends upon the willingness and readiness of CF members to defend against threats to national security. In order *"to maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently."*[2] This statement remains every bit as relevant today whether the CF is deployed to conduct operations in Canada's Arctic; to assist in the defence of North America as a partner in NORAD; to support the United Nations' effort in the conduct of Peace Support Operations; or to participate in combat as part of a multi-national effort fighting the insurgency in Afghanistan.

The military justice system applies worldwide and must be portable in order to meet the operational needs of the CF. The *Code of Service Discipline* (CSD) "deploys" with the CF regardless of whether they are serving in Afghanistan, on a warship patrolling for pirates off the African coast or providing support to law enforcement authorities during the 2010 Vancouver Olympics. This helps ensure those subject to the CSD remain liable to a disciplinary system that fully applies Canadian law whether at home or abroad. Further, it guarantees CF members charged with breaches of the CSD are dealt with under a legal system compliant with the *Canadian Charter of Rights and Freedoms* and which provides the protections of that *Charter* to accused service members.

One of the primary responsibilities of the JAG is to superintend the administration of military justice in the CF. This superintendence function, which includes monitoring, reporting, and policy development, helps ensure the military justice system meets the needs of Canadians, including the men and women of the CF who have volunteered to serve their country.

I am pleased to report that, as with the previous annual reports, there remains a high level of confidence by the chain of command and other participants in the military justice system. A review of the activity shows that the military justice system is agile and uniquely capable of meeting the increasingly complex operational environment of the 21st Century. It also reveals a system which, through a broad array of legislative, regulatory and policy initiatives, is continually evolving to both meet the disciplinary needs of the CF and remain current with developments in the broader Canadian criminal justice system. Further, extensive training and a commitment by participants to see justice done helps ensure disciplinary infractions are dealt with appropriately and in accordance with Canadian law.

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[1] *Généreux v. R.*, [1992] 1 S.C.R. 259.

[2] *Ibid.*, at 293.

The preparation of this annual report was delayed due to the requirement to re-allocate significant resources within the Office of the JAG to support the amendment of the NDA resulting from the Court Martial Appeal Court decision *R v. Trépanier*.[3] That April 2008 decision found that the selection process for choosing the type of court martial was unconstitutional. While the decision and its impact will be reported on in greater detail in the next annual report, it resulted in significant changes to the *National Defence Act*.[4] These changes included providing an accused service member facing trial by court martial the ability to choose the type of trial (e.g. military judge alone, or a military judge and panel members) in a manner similar to an accused in the civilian justice system (e.g. judge alone or jury trial). In addition, the number of types of courts martial was reduced from four to two: trial by Standing Court Martial or General Court Martial. This case highlights that the military justice system is subject to *Charter* scrutiny and as a result will continue to evolve to ensure accused persons are dealt with in accordance with the requirements of Canadian law.

Overall, there was an increase in the number of both courts martial and summary trials by 16% and 17.6% respectively during the reporting period. While the increases are virtually identical, there is nothing to indicate they are linked. The increase in the number of courts martial is likely attributable to this being the first full year of operation with the fourth military judge appointed in 2006. Of note is the fact that the 2007-2008 reporting period saw some 20% of courts martial being ordered for trial by a military judge with a panel of military personnel. The panel included non-commissioned members where the accused was a non-commissioned member.

The rise in the number of summary trials appears, in part, to be attributable to the increased recruiting of CF members. Seventy-five percent of the increase in total summary trials occurred within Military Personnel Command, which includes the Canadian Forces Leadership and Recruit School (CFLRS). Such an increase in summary trials should not be unexpected as such proceedings often occur in training establishments. It is at such establishments at the beginning of a CF member's career that an individual adjusts to the requirements of service life. The "habit of obedience" is then developed which is essential to the maintenance of a disciplined and operationally effective armed force.[5]

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[3] [2008] C.M.A.J. No. 3.

[4] R.S.C. 1985, c. N-5.

[5] Office of the JAG, *Summary Trial Working Group Report*, 2 March 1994 at p.16.

It is also evident that greater emphasis was placed at CFLRS on weapons handling. This emphasis is consistent with the broader focus being placed by the chain of command on the proper and safe handling of weapons, which was observed on in the last annual report. In this regard, summary trials involving negligent discharges remain 25% of all trials with the overall increase in summary trials being matched by a proportionate increase in negligent discharge cases. These statistical results have been communicated to the chain of command. It is evident that the military justice system provides an important means by which to address the serious matter of weapons handling within the broader context of the leadership and training responsibility of the chain of command for such incidents. The trends noted this year, such as the increase in the number of service tribunals conducted and the proportionately large number of negligent discharge cases, will continue to be monitored.

The Canadian military justice system remains "world-class". In order to maintain this status, there needs to be a continuing emphasis on improvement. Work is being undertaken to enhance the means by which statistics on the military justice system are collected including converting the existing summary trial database to a web-based program. During the review of summary trial data in preparation of this Report, a discrepancy in the reporting of statistics from previous reports was identified. As a result, statistics from previous years have been updated. Further, safeguards have been put in place to ensure the summary trial database will continue to provide an accurate means by which to review and assess the summary trial system.

Two areas which remain of primary concern continue to be trial delay and the development of enhanced training for assisting officers. Significant work has been completed during this reporting period including the conduct of an independent review of the Canadian Military Prosecution Service designed to provide recommendations to help limit trial delay. The Canadian Forces Military Law Centre, which was officially stood up in late November 2007, has been tasked with developing additional training for assisting officers.

It has often been stated that discipline is the soul of an armed force. The military justice system is an essential means by which discipline is maintained in the CF. I remain confident in the ability of our system to meet the needs of the CF and the Government of Canada.

KENNETH WATKIN, QC
BRIGADIER-GENERAL
Judge Advocate General

CHAPTER 1

The Office of the Judge Advocate General

1.1 THE JUDGE ADVOCATE GENERAL (JAG)

The JAG is responsible under the *National Defence Act* (NDA)[1] to superintend the administration of military justice in the Canadian Forces (CF).[2] As part of this responsibility, the JAG is statutorily required to conduct regular reviews and report annually to the Minister on the administration of military justice in the CF.[3] This is the report of the JAG to the Minister for the reporting period of 1 April 2007 to 31 March 2008.

As provided under the NDA, the JAG is appointed by the Governor in Council and serves at pleasure for a renewable term of four years.[4] As part of the statutory mandate, the JAG acts as the legal advisor to the Governor General, the Minister of National Defence (the Minister), the Department of National Defence (DND) and the CF in all matters relating to military law.[5] While the JAG is responsive to the chain of command for the provision of legal services, it is to the Minister that the JAG is responsible for the performance of his duties.[6]

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[1] R.S.C. 1985, c. N-5 [NDA].

[2] *Ibid.* at s. 9.2(1).

[3] *Ibid.* at ss. 9.2(2) and 9.3(2).

[4] *Ibid.* at s. 9.

[5] Canadian military law comprises three principal disciplines: Military Justice, Operational Law and Military Administrative Law. Operational law includes a broad range of laws relating to the CF including international and domestic laws applicable to CF deployments both external to and within Canada on land, at sea and in the air.

[6] *Supra* note 1 at s. 9.3(1), and Ministerial Organization Order 96-082. For a detailed description of the concepts of responsibility, authority and accountability within the CF and DND generally, see the DND publication "Organization and Accountability", 2nd edition, September 1999.

The position of the JAG within the CF and DND is illustrated in the organizational chart contained at Annex A.

1.2 OFFICE OF THE JAG

The Office of the JAG is an element of the CF that provides support to the JAG in the performance of his or her duties. The Office is embodied in the regular force of the CF, and the JAG is designated as an officer having the power and jurisdiction of an officer commanding a command.[7]

The JAG exercises command over all officers and non-commissioned members posted to an established position within the Office of the JAG.[8] The duties of the legal officers posted to a position within the Office of the JAG are determined by or under the authority of the JAG and, with respect to the performance of their duties, those legal officers are not subject to the command of any officer who is not a legal officer.[9] For military matters not related to the performance of their duties, legal officers, including the JAG, are subject to the orders and direction of the CF chain of command.

1.3 STRUCTURE OF THE OFFICE OF THE JAG

As of March 2008, there were 148 regular force legal officers and 58 reserve force legal officers serving across Canada and abroad. While most of these served in the Office of the JAG, this number also includes legal officers on post-graduate and other academic training as well as those legal officers serving at the Canadian Forces Military Law Centre (CFMLC) and on exchange. Permanent legal offices are located in Ottawa at National Defence Headquarters (NDHQ) and with the four operational command headquarters, at regional Assistant Judge Advocate General (AJAG) offices and separate Deputy Judge Advocate (DJA) offices in Canada, and in Europe and the United States.

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[7] Ministerial Organization Order 96-082 dated 1 August 1996. For the authority relating to command generally, and command of commands specifically, see *Queen's Regulations and Orders for the Canadian Forces* [QR&O], Chapter 3, Section 2, and article 3.21.

[8] QR&O, article 4.081(2).

[9] QR&O, article 4.081(4) .

Structurally, the Office is composed of six sub-organizations: the Canadian Military Prosecution Service, the Defence Counsel Services and four divisions that are headed by Deputy Judge Advocates General (DJAG) and include Military Justice and Administrative Law, Operations, Regional Services and Chief of Staff. Each of these divisions provides direct support to the military justice system.

Organization charts outlining the structure of the regular and reserve components of the Office of the JAG are included at Annex B.

The Canadian Military Prosecution Service (CMPS)

The CMPS is headed by the Director of Military Prosecutions (DMP) who is a legal officer appointed by the Minister for a four-year term and is a barrister or advocate with at least 10 years standing at the bar of a province.[10] As provided for by the NDA, the DMP is responsible for preferring all charges for trial by court martial, for the conduct of all prosecutions at court martial, and for representing the Minister on criminal appeals to the Court Martial Appeal Court of Canada and the Supreme Court of Canada when instructed to do so.[11] In addition to these statutory responsibilities, the DMP provides advice and services in support of criminal and disciplinary investigations to the Canadian Forces National Investigation Service (CFNIS), which is a section of the Military Police and is mandated to investigate serious and/or sensitive service and criminal offences.

In exercising prosecutorial discretion to prefer charges and conduct prosecutions, the independence of the DMP is protected by both the institutional structures in the NDA and the common law.[12] In these ways, the role of the DMP is analogous to that of a director of public prosecutions in the civilian criminal justice system.

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[10] *Supra* note 1 at s. 165.1. On 17 January 2005, Captain (Navy) Holly MacDougall was appointed as the DMP.

[11] *Ibid.* at s. 165.11.

[12] See *R. v. Balderstone* (1983), 4 D.L.R. (4th) 162 (Man. C.A.). Leave to appeal to the Supreme Court of Canada refused: see [1983] S.C.C.A. No. 44. Canadian courts have placed significant legal restrictions on the review of the exercise of prosecutorial discretion. Courts will undertake such reviews only in the clearest case of abuse of process. See e.g. *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372.

The NDA provides that the DMP acts under the general supervision of the JAG, and that the JAG may issue general instructions or guidelines to the DMP in respect of prosecutions in general or in relation to a particular prosecution.[13] During the reporting period, no new instructions or guidelines were issued in addition to those already in existence.[14]

Annex C of this report contains the annual report of the DMP.[15]

Defence Counsel Services (DCS)

The Director of Defence Counsel Services (DDCS) is an officer appointed by the Minister for a term not exceeding four years and is a barrister or advocate with at least 10 years standing at the bar of a province.[16] The DDCS provides, supervises and directs the provision of legal services to accused persons, as defined in regulations.[17]

The DDCS is statutorily insulated from other CF and DND authorities for the purpose of protecting the DDCS from potentially inappropriate influence. Legal officers assigned to DCS represent their clients in accordance with DDCS and JAG policies as well as the code of professional conduct of their respective law societies. These safeguards are designed to preserve and enhance the legal and ethical obligations that DCS legal officers owe to their clients. Furthermore, communications with their clients are protected at law by solicitor-client privilege.

The DDCS acts under the general supervision of the JAG who may issue general instructions or guidelines in writing in respect of defence counsel services.[18] The JAG, however, is not authorized to issue instructions or guidelines in respect of a particular defence or court martial. During the reporting year there were no new general instructions or guidelines issued.

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[13] *Supra* note 1 at s. 165.17. The JAG must give a copy of every such instruction to the Minister. The DMP must ensure that such instructions are made available to the public, except in limited cases where the DMP decides that release to the public of an instruction or guideline would not be in the best interests of the administration of military justice.

[14] See JAG Policy Directives to DMP, http://www.forces.gc.ca/jag/office/publications/default_e.asp#Policy%20Directives.

[15] This report is made in satisfaction of the DMP's requirement to report annually to the JAG. See QR&O, article 110.11.

[16] *Supra* note 1 at s. 249.18. On 19 April 2007, Lieutenant-Colonel Jean-Marie Dugas was reappointed DDCS for a second four-year term, commencing 1 September 2007.

[17] See QR&O, article 101.20.

Annex D of this report contains the annual report of the DDCS.[19]

Deputy Judge Advocate General/Military Justice and Administrative Law (DJAG/MJ&AL)

DJAG/MJ&AL is responsible for providing DND and CF authorities with legal support in relation to military justice, military administrative law, compensation and benefits and other military personnel matters.

During the reporting period, there was one notable organizational change made within the DJAG/MJ&AL division. The Directorate of Law/Estates, Pensions & Elections and the Directorate of Law/Compensation and Benefits were consolidated into the new Directorate of Law/Compensation, Benefits, Pensions and Estates (DLaw/CBP&E). This directorate has responsibility for administering service estates on behalf of the JAG (in his capacity as Director of Estates) and provides legal support relating to service estates, the *Canadian Forces Superannuation Act*,[20] and compensation and benefits issues. The functions relating to elections have been assigned to the newly created position of the Assistant DJAG/MJ&AL who performs these functions as Director of Law/Elections. Accordingly, the DJAG/MJ&AL organization currently comprises the Directorate of Law/Military Justice Policy and Research (DLaw/MJP&R), the Directorate of Law/Military Personnel (DLaw/Mil Per), the Directorate of Law/Administrative Law (DLaw/Admin Law), and the DLaw/CBP&E.

With the support of DLaw/MJP&R, the DJAG/MJ&AL develops and advises the JAG on military justice policy matters, collects and maintains information and statistics related to the military justice system, and provides advice to the Canadian Forces Provost

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[18] *Supra* note 1 at s. 249.2 The DDCS must make any general instructions or guidelines available to the public. See for example, *JAG Policy Directive 009/00 General Instructions in Respect of Defence Counsel Services* issued on 23 March 2000, http://www.forces.gc.ca/jag/office/publications/policy_directives/2.pdf.

[19] This report is made in satisfaction of the DDCS's requirement to report annually to the JAG. See QR&O, article 101.20(5).

[20] R.S.C. 1985, c. C-17.

Marshal in relation to professional standards and military police policies and doctrine. The DJAG/MJ&AL is also responsible for conducting reviews of the military justice system in furtherance of the JAG's statutory mandate.

Deputy Judge Advocate General/Operations (DJAG/Ops)

DJAG/Ops is responsible for providing legal support to CF and DND authorities in relation to all matters related to operational law.

As noted in last year's Annual Report, significant changes as a part of the CF Transformation took place during the 2005-2006 period and involved the establishment of new joint organizations to meet the Government of Canada's expectations for relevance, responsiveness and effectiveness. A key element of this transformation was the creation of four new operational commands: Canada Command (Canada COM), Canadian Expeditionary Force Command (CEFCOM), Canadian Special Operations Forces Command (CANSOFCOM) and Canadian Operational Support Command (CANOSCOM).[21]

The establishment of the new command headquarters necessitated structural changes within the DJAG/Ops division to enhance and devolve the provision of legal support for CF operations. In particular, dedicated legal officer positions were assigned to each of the new operational commands. As a result, the focus of the legal support being provided at NDHQ has shifted from a blend of operational and strategic to one that is now largely focused on strategic level advice. Accordingly, to reflect the work it does with the Strategic Joint Staff, the Directorate of Law/Operations was renamed the Strategic Joint Staff Legal Advisor (SJS LA) during this reporting period. As well during the reporting period, the SJS LA engaged in an officer exchange with the US Army JAG. As a result, a member of the US Army JAG commenced a two-year posting with the SJS LA in October, while a Canadian legal officer commenced the first ever exchange to the Center for

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[21] For further information concerning the Commands, see: Canada COM: http://www.canadacom.forces.gc.ca, CEFCOM: http://www.cefcom.forces.gc.ca, CANSOFCOM: http://www.cansofcom-comfoscan.forces.gc.ca, and CANOSCOM: http://www.canoscom-comsocan.forces.gc.ca.

Law and Military Operations at the US Army JAG's Legal Center and School in Charlottesville, Virginia.

Currently, the DJAG/Ops division comprises SJS LA, the Directorate of Strategic Legal Analysis, the Directorate of Law/Intelligence and Information Operations, and the legal advisors to the four new operational commands. Through each of the command legal advisors, DJAG/Ops is responsible for providing all legal support relating to military justice matters within the respective commands. In particular, through the CEFCOM legal advisor, DJAG/Ops oversees all legal officers on deployed operations and through them provides legal support to deployed military police, as well as deployed CF formations and units on military justice issues. Members of the military police assigned to the CFNIS continue to receive legal support from the DMP on investigatory matters while participating in operations.

Deputy Judge Advocate General/Regional Services (DJAG/Reg Svcs)

The DJAG/Reg Svcs division comprises the legal offices that are located on selected bases or in areas in each of the regions in Canada (Pacific, Western, Prairie, Central, Eastern and Atlantic) as well as in the United States and Germany.[22] Through these offices, the DJAG/Reg Svcs is responsible for providing general legal support, including advice on military justice matters, to the chain of command. The regional offices, for example, provide direct legal support to regular and reserve force units, including the military police, in relation to military justice issues including the conduct of investigations, the laying of charges, the disposal of charges at summary trial and the referral of charges to courts martial. Members of the military police assigned to the CFNIS receive legal support from the DMP on investigatory matters.

Chief of Staff /Judge Advocate General (COS/JAG)

The COS/JAG division is responsible for providing the necessary support and administrative services to the Office of the JAG including financial, information management, library services and training as well as overseeing all non-legal military and civilian staff in the Office of the JAG. This division saw a significant reorganization during the reporting period as a result of the establishment of the CFMLC, which has assumed the role of providing military legal training and the responsibility for developing and delivering military justice training. Accordingly, two organizations within the COS/JAG Division, the Office of Military Legal Education (OMLE) in Kingston, Ontario and the Directorate of Law/Training (DLaw/T) were stood down and their functions were largely taken over by the CFMLC.

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[22] For particulars, see Annex B.

Canadian Forces Military Law Centre (CFMLC)

The CFMLC was stood-up on 30 November 2007 in Kingston, Ontario under the command of the Canadian Defence Academy. The CFMLC inherited the responsibilities of DLaw/T and the OMLE, and its mission is to provide legal research, training and education to the CF, including legal officers. The CFMLC and its complement of nine legal officers have already delivered a broad range of legal education and will develop publications for the CF. In particular, CFMLC is responsible for administering training for the certification and re-certification of presiding officers. The JAG remains responsible for granting the actual certification that members are qualified to perform their duties in the administration of the *Code of Service Discipline.*

Chief Warrant Officers (CWOs) and Chief Petty Officers 1st Class (CPO1s) within the Office of the JAG

There are currently nine CWO/CPO1 positions within the Office of the JAG that are located in Ottawa and in each of the regions in Canada. The JAG CWO is located with the Office of the JAG at NDHQ in Ottawa and serves as an essential advisor to the JAG, and as conduit to the chain of command and non-commissioned members (NCMs) in respect of the administration of military discipline.[23] This position ensures that the Office of the JAG has direct access to the knowledge and experience of senior NCMs of the CF in relation to discipline.

The remaining CWOs and CPO1s are located in each of the regions of Canada and are associated with either the AJAG office in each region or a designated DJA office.[24] The AJAG and DJA CWOs/CPO1s perform an important role by maintaining a direct contact with the NCMs situated in their respective regions and provide an invaluable bridge between the local legal office and the senior NCMs in relation to disciplinary matters.

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[23] CWO Normand Trépanier was appointed as the JAG CWO in April 2006.

1.3.1 DEPLOYED OPERATIONS

The Office of the JAG continues to deploy legal officers to provide direct legal support to CF operations. During this reporting period, a total of 35 regular force legal officers were deployed in support of eight international operations: Operations ARCHER, ATHENA and ARGUS in Afghanistan; Operation CROCODILE in the Democratic Republic of the Congo; Operation SAFARI in Sudan; Operation ALTAIR, a naval operation in the Persian Gulf region; Operation SIRIUS, a monitoring and surveillance operation in the Mediterranean Sea; and Operation SEXTANT, a naval operation in the North Sea.[25] The number of legal officers deployed in support of operations during the reporting period represents approximately 25% of the legal officers serving in the CF.

During this reporting period the Office of the JAG established a legal officer position with a US military legal advisory team in Afghanistan. The function of this team is to mentor the Afghan military legal service and military judges in the implementation of a military justice system for the Afghan National Army.

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[24] There is an AJAG CWO/CPO1 at the following offices: AJAG Pacific in Esquimalt; AJAG Western in Edmonton; AJAG Prairie in Winnipeg; AJAG Central in Petawawa; AJAG Eastern in Valcartier and AJAG Atlantic in Halifax. The DJA CWO/CPO1 positions are located in Borden and Gagetown.

[25] Support on Ops ALTAIR, SIRIUS and SEXTANT was continuous throughout the deployments, although a legal officer was co-located with the ships and aircraft for only part of the operation.

1.4 OFFICE OF THE LEGAL ADVISOR TO THE DND/CF (DND/CF LA)

While the JAG superintends the administration of military justice and provides advice on all matters relating to military law, the DND/CF LA also provides legal support to the DND and the CF.[26] The Office of the DND/CF LA is a Legal Services Unit of the Department of Justice, and its staff comprises both civilian lawyers from the Department of Justice as well as military legal officers posted to work within that office.

The operational goal is for the Office of the DND/CF LA and the Office of the JAG to provide seamless legal services to the DND and the CF. For example, the drafting and coordination of legislation and regulations relating to military justice is a collaborative effort between the two offices.

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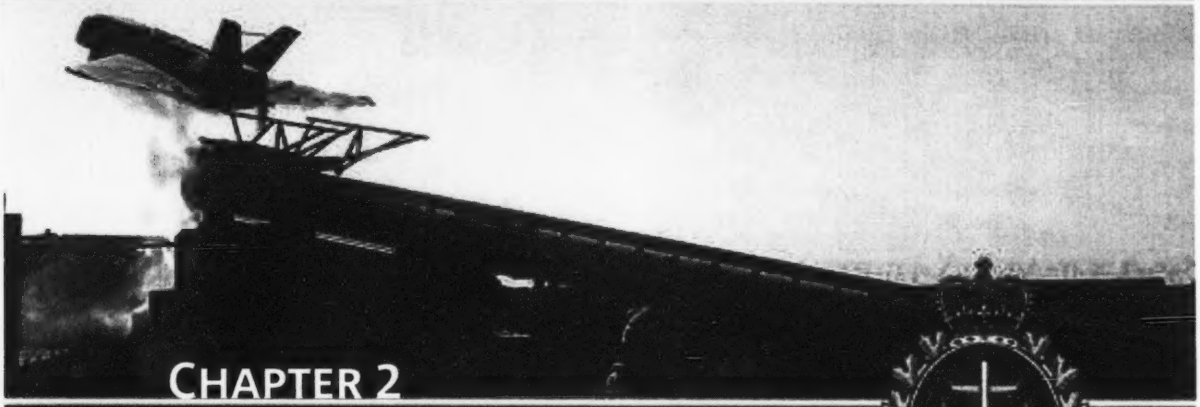
[26] Oonagh Fitzgerald was appointed the DND/CF LA on 27 March 2007.



CHAPTER 2

Review of the Collection of Information on the Administration of Military Justice

2.1 INTRODUCTION

As part of the JAG's statutory responsibility to superintend the administration of military justice in the Canadian Forces (CF), the JAG is required to conduct regular reviews of the military justice system and to report to the Minister on an annual basis on the administration of military justice.[1] There are two principal methods by which the JAG fulfills these obligations: through the collection of data and compilation of statistics related to both the summary trial and court martial systems; and by the conduct of surveys involving selected members of the chain of command as well as individuals who have been involved in the summary trial process. This chapter outlines the different methods of data collection employed during the reporting period.

2.2 TRIAL STATISTICS

Summary Trial Database

The summary trial database is used to maintain data related to each charge laid in the military justice system. The information contained in this database comes from the Record of Disciplinary Proceedings (RDP).[2] The RDP is the form used in each discipline matter to lay a charge or charges under the *Code of Service Discipline*, which comprises Part III of the NDA. The RDP is also used to record all the key steps taken in relation to each discipline matter as well as how the charge(s) are finally disposed at the summary trial level and the results of any review conducted.[3] Units are required to forward a copy of all RDPs that contain charges for which a final disposition has been made on a monthly basis to the unit's legal advisor who reviews the documents and in turn submits them to the Directorate of Law/Military Justice Policy and Research (DLaw/MJP&R) within the Office of the JAG.[4] DLaw/MJP&R is then responsible for collecting the relevant information from each RDP, which is used to populate the database.

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[1] *National Defence Act*, R.S.C. 1985, c. N-5 [NDA], ss. 9.2 and 9.3.

[2] *Queen's Regulations and Orders for the Canadian Forces* [QR&O] article 107.07.

The information entered into the database is used to generate reports and statistics relevant to the summary trial process, which provide a snapshot of the activity at a given time and allow for the identification of trends and analysis of the state of the summary trial system. For example, data is used to compare the number of summary trials held from one reporting period to the next, which assists in assessing confidence in the system. Similarly, the data can be used to identify trends in the types of offences being charged in the CF.

Annex E contains data pertaining to the 2006-2007 and the 2007-2008 reporting periods and reflects the distribution of service tribunals, demographics (language of trials, commands and ranks of the accused), summary of charges, dispositions by charge, punishments, and data concerning reviews. Additionally, the Annex provides a comparison of the five most prevalent types of offences dealt with at summary trial over the last five years.[5]

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[3] QR&O, article 107.14. Commanding Officers (COs) are obligated to maintain a Unit Registry of Disciplinary Proceedings (URDP). The URDP must contain a copy of all RDPs from the CO's unit, a copy of any report of investigation conducted once a final disposition of the subject charges has been made by a presiding officer, a copy of all applications for referral to court martial, and a copy of all decisions rendered from the review of summary trials.

[4] QR&O, article 107.15. By the seventh day of each month, every CO shall forward to the unit legal advisor copies of documents that have been placed on the URDP during the preceding month. Unit legal officers forward copies of the same documents to the DLaw/MJP&R for entry into the summary trial database.

[5] The five most prevalent types of offences are charged contrary to three sections of the NDA: s. 90 - *Absence Without Leave*, s. 97 - *Drunkenness*, and s. 129 - *Conduct to the Prejudice of Good Order and Discipline*. Section 129 is used to charge a wide breadth of conduct, for statistical purposes it is broken down and tracked into four subcategories: offences of a sexual nature, offences involving drugs and alcohol, offences for which an election to court martial were given, and offences for which an election was not given. The latter three subcategories of offences, as well as those charged under s. 90, and s. 97 are the five most frequently occurring offences in the CF.

As mentioned above, the information maintained in the summary trial database is drawn from the RDPs that are forwarded by the relevant units; accordingly, the database is dependant on the timely receipt of the RDPs. Unfortunately, not all RDPs corresponding to summary trials held during a reporting period are received for entry into the summary trial database before the cut-off date for compiling year-end statistics for inclusion in the Annual Report. As a result, there has been an under reporting of the number of summary trials in previous Annual Reports.

However, it also became evident that part of the increase was due to chronically late reporting. The delay in the preparation of the report resulted in the reporting of more summary trials that otherwise would have missed an earlier cut-off date. Upon being informed that the cut off dates set in previous years may have resulted in an under reporting of summary trials, a review was directed by the JAG to: determine any previous discrepancies in reporting; compile an up to date list of trials; and determine what steps should be taken to avoid this situation happening in future reports.

The following is a chart containing the updated statistics for 1999-2000 to 2007-2008.

Fiscal Year	Summary Trials Reported	Cut-Off Date for Database Access for Annual Report	Number of Unreported Summary Trials	Number of Summary Trials according to Database accessed on 1 Oct 08
1999-2000	426	Not known	80	506
2000-2001	1112	Not known	42	1154
2001-2002	1122	Not known	72	1194
2002-2003	1568	15 Apr 03	125	1693
2003-2004	1610	15 Apr 04	127	1737
2004-2005	1407	12 May 05	74	1481
2005-2006	1505	1 May 06	98	1603
2006-2007	1660	7 Jun 07	73	1733
2007-2008	2035	1 Oct 08	0	2035

In order to ensure that the statistics reported for each period are as complete and accurate as possible, a number of measures are being introduced. First, regular status reports will be sent to unit legal advisors so that they are aware of the timeliness of the monthly RDP reports and so they will be in a position to advise units of the importance of timely reporting. As well, a formal notice will be prepared for dissemination to the chain of command before the end of the reporting period to emphasize the importance of and requirement to submit copies of their RDPs in accordance with the established timelines.[6] Further, a later date will be used to ensure units have an adequate opportunity to submit their remaining RDPs for each reporting period so that the information contained therein can be captured in the year-end statistics. Lastly, new methods for disciplinary information gathering and tracking will be explored in the case of the Comprehensive Information Management Project (CIMP). The CIMP is an initiative to support the creation of a JAG Information Management System (JAGNet). The JAGNet will transform the information management practices within the Office of the JAG by enhancing the ability of JAG officers to manage records and documents and to share information. This is discussed in greater detail in Chapter 7.

It is recognized that despite our best efforts it may not be possible to avoid the late receipt of RDPs altogether. Accordingly, future annual reports will indicate any discrepancies found between the number of summary trials reported for the previous reporting period and the number that were actually held.

This and future annual reports will use those amended statistics in order to provide as accurate a picture as possible of trends impacting on the summary trial system.

Court Martial Reporting System (CMRS)

Statistics relating to courts martial are generated using information gathered and retained in the CMRS database. The CMRS is a proprietary database system written and maintained by the JAG Informatics department. The responsibility for entering and ensuring the accuracy of the information contained in the CMRS resides with the DLaw/MJP&R. Information is provided to DLaw/MJP&R by the Canadian Military Prosecution Service (CMPS) in the course of their handling of charges referred to the Director of Military Prosecutions by the chain of command.

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[6] QR&O, article 107.15.

The data maintained in the CMRS is used to enable the JAG to monitor the court martial system and identify trends. For example, the CMRS is used to generate statistics to demonstrate the length of time required in each case to complete all the stages leading to the determination of a matter, from the date a charge is laid until a final decision in any court martial or appeal. The statistics for the current reporting period are found in Annex F. This Annex contains data including the number and types of courts martial, demographics, a summary of the charges and the sentences imposed.

2.3 SURVEYS

Survey on the Summary Trial Process

Since 2000, the Office of the JAG has conducted an annual military justice survey on the summary trial process. The purpose of the survey is to assess, from the perspective of those who are involved in the summary trial process, how well the process is working and the extent to which the regulations regarding the summary trial process are followed. They target those members who, during the reporting period, have been involved in the summary trial process as Commanding Officers (COs), presiding officers, assisting officers, charge-laying authorities, accused members and review authorities.

This year's Survey on the Summary Trial Process[7] was administered by the Director Military Personnel Operational Research and Analysis (DMPORA). This marks the second year that DMPORA and its predecessor organization, the Directorate of Personnel/Applied Research (D Pers/AR), administered the survey on behalf of the Office of the JAG. DMPORA is a part of the Director General Military Personnel, and its principal role is to provide research services and advice within the CF and the Department of National Defence (DND). Although DMPORA is an internal DND organization, strict measures were taken to ensure that the survey was conducted independently.

The Office of the JAG assisted in preparing the survey questionnaire to ensure that the data collected was related to the required subject areas and was responsible for distributing the survey by e-mail and CANFORGEN through the chain of command. DMPORA was responsible for the administration of the survey and the compilation of the data. The integrity of the survey results has been assured through the application by DMPORA of scientific methodologies in the collection and analysis of the data. Furthermore, both the content and methodology of the survey were subject to the scrutiny and approval of the Research Review Board, a DND/CF organization, which has quality control and coordination oversight for all DND/CF research. The Board is composed of seven members from DMPORA and the environmental commands.

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[7] Urban, S., *Survey on the Summary Trial Process: 2008 Results*, Centre for Operational Research and Analysis, Technical Memorandum 2008-25, Defence Research and Development Canada (Ottawa: Department of National Defence, 2008).

Before the survey was launched, the survey questionnaire was reviewed and modified with the assistance of DMPORA to ensure its continuing high quality and comprehensiveness in regard to all the relevant subject areas. Similar to past practice, participation in the survey was solicited through a CF-wide message sent to all CF units, notification on the Defence Intranet with links to the JAG website, and by having the questionnaire provided to the chain of command for direct distribution to those individuals who had been involved in the summary trial process during the reporting period. Further, in order to enhance the distribution of the survey, DMPORA compiled a list of CF members who had been involved in summary trials, other than accused members, between 1 April 2007 and early January 2008. Members who acted as charge-laying authorities, assisting officers, and review authorities were identified from RDPs, and an electronic copy of the survey was sent to each of these individuals. In addition, members were given the choice to complete the survey either electronically or in paper format.

Data collection was carried out during the weeks of 15 February through 7 March 2008. The results of the survey are discussed in Chapter 3 and are available on the JAG website.[8]

Interview Survey of Stakeholders

The Military Justice Interview Survey of Stakeholders involves interviews with members of the chain of command who perform specific roles within the military justice system. The purpose of this survey is to provide a forum for stakeholders to identify and discuss systemic issues relevant to the military justice system and to examine matters that would not be apparent from the statistical information. Interviews are normally conducted by an officer from DLaw/MJP&R with the JAG Chief Warrant Officer and require that those individuals conducting the interviews travel to meet stakeholders and spend a significant number of days out of the office. The interview survey was last conducted during the 2006-2007 reporting period and, due to competing military justice priorities and the personnel resources required to conduct the survey, it was not conducted during the 2007-2008 reporting period. The interview survey is an important tool for gleaning the views and concerns of the chain of command regarding the military justice system and will continue to be used in the future.

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[8] See: http://www.forces.gc.ca/jag/office/publications/compliance_survey/07-08_e.pdf.

External Reviews of the Military Justice System

As indicated in the previous Annual Report, timeliness for proceeding with matters in the military justice system and, in particular, the timeliness of courts martial is a top priority for the Office of the JAG. Accordingly, the Office of JAG undertook a number of initiatives during the reporting period to enhance timeliness and address delay in the military justice system, which are discussed in Chapter 6. One of the initiatives undertaken was to have reviews conducted by individuals external to the military justice system and the CF into specific processes within the military justice system for the purpose of identifying ways for the administration of military justice to function as efficiently and timely as possible.

The first external review was conducted in relation to the structure and operations of the CMPS. The purpose of this review was to identify factors within the purview of the CMPS that contribute to delay in the military justice system and make recommendations on ways to mitigate delay. However, to conduct the review it was necessary to look broadly at the military justice system and at the court martial system in particular. The CMPS external review, conducted by two senior retired crown attorneys, was completed during the reporting period and the final report is expected early in the next reporting period. Details about the review and the resulting recommendations will be provided in the next Annual Report.

Preparations for a second external review involving Defence Counsel Services also commenced during the reporting period. It is expected that this review will be completed during the next reporting period.

CHAPTER 3

Review of the Summary Trial System

3.1 INTRODUCTION

The existence of a system of military justice that fosters the timely, effective and fair disposition of disciplinary infractions is critical to establishing and maintaining a well-disciplined military force. The military justice system is portable and can be used anywhere in the world.[1] Individuals subject to the *Code of Service Discipline* (CSD) are liable to be charged and tried for breaches of the laws of Canada no matter where an offence takes place. This means that the military justice system deploys with the Canadian Forces (CF) wherever it goes. In comparison, the *Criminal Code*[2] contains few extra-territorial offences and is largely limited in application to offences that occur in Canada.

Within the Canadian military justice system, there are two distinct tribunal structures used for dealing with service offences: the summary trial system,[3] and the more formal court martial system, which will be reviewed in Chapter 4. The summary trial, which is used to deal with the vast majority of disciplinary matters within the military justice system, has two principal purposes: to provide prompt but fair justice in respect of minor service offences and to contribute to the maintenance of military discipline and efficiency, in Canada and abroad, in time of peace or armed conflict.[4]

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[1] *National Defence Act*, R.S.C. 1985, c. N-5 [NDA], s. 60.

[2] R.S.C. 1985, c. C-46.

[3] See generally NDA, Part III *Code of Service Discipline*, at ss. 162.3 – 164.2, and the *Queen's Regulations and Orders for the Canadian Forces* [QR&O], Chapter 108.

[4] QR&O, article 108.02.

This Chapter sets out the statistical data collected in relation to summary trials and provides an analysis of the results from the Survey on the Summary Trial Process.

3.2 SUMMARY TRIALS CONDUCTED DURING THE REPORTING PERIOD

Detailed statistics for the summary trials held from 1 April 2007 to 31 March 2008 are provided at Annex E while a number of key statistics are set out below.

The statistics show that a total of 2,113[5] disciplinary proceedings were held during the reporting period. Of this number, 599 accused were offered the right to elect trial by court martial and 39 or 6.5% of accused elected court martial. Accordingly, 93.5% of all accused who were offered the opportunity to be tried by court martial chose to be tried by summary trial. The percentage of accused members who have elected trial by court martial has remained consistent over the past four years with the percentages ranging between 4.9% in 2004-2005 and 8.49% in 2006-2007, and with the overall average being 6.6%. The steadiness of this figure is an indication of the continuing confidence in the summary trial process held by accused members. The fact that the vast majority of accused members, when offered the choice, choose trial by summary trial can be taken as a further indication that accused members are satisfied that they will be treated fairly and their matters dealt with appropriately at the unit level proceedings.

According to the summary trial information received by 1 October 2008, a total of 2,035 summary trials were conducted during the 2007-2008 reporting period. This figure represents an increase of 302 from the 1,733 summary trials held during the 2006-2007 reporting period. This 17.6% increase in the number of summary trials between the two reporting periods is viewed as significant.

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[5] This figure includes the total number of summary trials (2,035) and courts martial (78) conducted.

Looking at the statistics and the circumstances as a whole, this increase is largely attributable to the significant increases in the number of summary trials held within the Military Personnel Command (MILPERSCOM) during the reporting period as compared to 2006-2007. During the 2006-2007 period, a total of 260 summary trials were held in MILPERSCOM, which increased by 227 to a total of 487 summary trials in the current reporting period. This 87% increase in MILPERSCOM summary trials represents 75% of the increase of 304 summary trials across the CF.

Among the organizations that comprise the MILPERSCOM is the Canadian Forces Leadership and Recruit School (CFLRS), which is primarily responsible for training. These facilities primarily train newly recruited CF members, who generally enter the armed forces at the rank of officer cadet or private. During the reporting period, CFLRS accounted for 306 of the 487 summary trials held within the MILPERSCOM. Further, the 306 summary trials held at CFLRS represent an increase of 231 summary trials over the 75 that were held there during the 2006-2007 reporting period, which accounts for 97% of the increase in summary trials within the MILPERSCOM.

It is important to note that between the 2006-2007 and 2007-2008 periods, the number of CF members trained at CFLRS increased by 20% from 4,161 to 4,995. While this increase is less than the increase in summary trials between the two reporting periods, the higher number of members going through basic recruit and officer training is a factor in the increased number of summary trials conducted. An essential purpose of military discipline is to assimilate recruits to the institutional values of the military.[6] Traditionally, summary trials occur frequently in recruit and training environments as new members of the CF develop the "habit of obedience" essential to a disciplined and operationally effective armed force.[7]

In addition, the chain of command appears to have made greater use of the military justice system to emphasize proper weapons handling. For example, 95 of the summary trials held at CFLRS during the reporting period related to the negligent discharge of a weapon, while no summary trials for this offence were held during the 2006-2007 period.

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[6] *Military Justice at the Summary Trial Level*, at pp.1-9, available on line at: http://www.forces.gc.ca/jag/training/publications/POCT_docs/military_justice_manualOLD_e.pdf.

[7] Office of the JAG, *Summary Trial Working Group Report*, 2 March 1994 at p.16.

As can be noted, even with the newly revised statistics, the number of summary trials held during each of the past six reporting periods clearly varies both up and down over time.[8] Between the 2002-2003 and the 2006-2007 reporting periods, the number of summary trials has moved between the range of 1,481 and 1,737 with the average being 1,649. The 2,035 summary trials held during this reporting period represents an increase of nearly 300 summary trials over the next highest period. While this increase appears to be related in part to the increase in newly recruited CF members and the use of summary trials to address specific disciplinary issues, it is important to continue monitoring to assess what trends may develop.

With regard to the specific charges laid during the reporting period, the statistics show that 1,398 or 53% of those charges were laid under section 129 of the NDA – Conduct to the Prejudice of Good Order and Discipline. This represents a slight decrease from the 2006-2007 period where section 129 offences represented 53.5% of all charges laid. It is important to note that for statistical purposes, section 129 is divided into four categories: (1) offences of a sexual nature, (2) offences related to drugs or alcohol, (3) offences where an election to be tried by court martial is given (excluding offences captured by the two first categories), and (4) offences where no election to be tried by court martial is given (excluding offences captured by the two first categories). In the reporting period, the proportion of total summary trials for the first category of section 129 offences was 0.7%,[9] for the second category it was 5.2%, for the third category it was 16.2% and for the fourth category it was 31.1%. This proportional distribution of section 129 charges varied minimally from the distribution during the 2006-2007 period.

In the 2006-2007 reporting period, 395 or 22.8% of the summary trials conducted in relation to offences charged under section 129 of the NDA related to the negligent discharge of a weapon. This figure represented a 40% increase in the number of summary trials for the same offences during the 2005-2006 period.

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[8] See table on page 13, Chapter 2.

[9] Offences of a 'sexual nature' heard at summary trial generally involve inappropriate comments, use of the Internet and fraternization. More serious offences of a sexual nature are generally dealt with at courts martial.

This increase prompted the Office of the JAG to look at the negligent discharge statistics for 2006-2007 in greater detail and to bring the matter to the attention of the chain of command. The JAG first brought the issue to the attention of the chain of command in June 2007 and subsequently provided more detailed information to the Commanders' Council in February 2008.[10]

The increase in summary trials for negligent discharge offences observed during the 2006-2007 reporting period also prompted a more in-depth review of the statistics relevant to such offences during the 2007-2008 reporting period. In the 2007-2008 period, 510 summary trials were held for negligent discharge offences, which is an increase of 115 over last year's figure of 395. However, as a proportion of the total number of summary trials, the level of negligent discharge offences remained similar; the proportion in 2006-2007 was 22.8% compared to 25% in 2007-2008. Of the summary trials held, 69 took place in a theatre of operations. This number represents 37% of all summary trials that took place in operations, which is 7% lower than the percentage of summary trials during the 2006-2007 period.

A review of the negligent discharge offences across the CF in non-operational settings revealed a number of common themes over the two reporting periods. First, negligent discharge offences occurred in greatest numbers at training units or in training circumstances. During the 2006-2007 period the highest numbers of summary trials for negligent discharges occurred in four units: Land Force Quebec Area Training Centre (LFQA TC), the Land Force Central Area Training Centre (LFCA TC), the Infantry School and the Land Force Western Area Training Centre (LFWA TC). Collectively, these units accounted for 172 of the 395 summary trials for negligent discharges. During the 2007-2008 reporting period, the same four units together with CFLRS handled, in total, 224 of the 510 summary trials involving negligent discharges. CFLRS and the Infantry School in particular train members at the beginning of their careers. Furthermore, LFQA TC, LFCA TC and LFWA TC are frequently used for training by units preparing to deploy on operations outside of Canada.

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[10] Commanders' Council is comprised of the CF senior leadership. Its objective is to provide the Chief of the Defence Staff with support and advice on issues of strategic and operational importance.

Another link between training and the occurrence of negligent discharge offences is found in the actual particulars of the charges laid for the negligent discharge of weapons. During the 2006-2007 reporting period, the charge particulars in 83% of the 332 summary trials held for the negligent discharge of weapons indicate that the offences occurred in relation to training. In the 2007-2008 reporting period, the charge particulars in 96% of 441 summary trials indicate the offences occurred in training circumstances.

Second, the majority of negligent discharge offences are committed by CF members who are at early stages in their careers. In 2006-2007, 62% of all accused tried at summary trial for negligent discharge offences held the rank of private or officer cadet and in 2007-2008, 64% of accused held these ranks. Private and officer cadet are the entry ranks for non-commissioned members and officers, respectively.

As indicated in the 2006-2007 Annual Report, there are a number of factors that may account for an increase in offences related to the negligent discharge of weapons over the past two reporting periods. Representatives from the chain of command in communication with the Office of the JAG have advised that land force training has changed markedly over the course of the last few reporting periods. Training in support of current operations is robust and increasingly tailored to the nature of the missions. Pre-deployment training for CF members being sent abroad may last the better part of a year and it is designed to emulate conditions and circumstances in Afghanistan. The chain of command indicates that CF members undergo weapons training more frequently and have more ammunition available for training purposes than in the past. Their confidence in CF members' weapons handling remains high and it is suggested that one interpretation of the statistics may be that the opportunity for the negligent discharge of a weapon is significantly higher when a member spends more time training with weapons.

The military justice system provides the chain of command an important means by which to address the serious matter of the inappropriate handling of weapons. Ultimately, the proper handling of weapons remains a leadership and training responsibility.

3.3 SURVEY ON THE SUMMARY TRIAL PROCESS

Survey Process

For the second year, the Office of the JAG engaged the Director Military Personnel Operational Research and Analysis (DMPORA) to conduct a CF-wide survey on the administration of summary trials. This survey is designed to:

- indicate how well CF members and units are complying with the regulations concerning the conduct of summary trials;
- contribute to the growing body of statistical information against which the performance of the military justice system can be measured;
- contribute to the ongoing review of the NDA reforms; and
- determine the effect of enhanced military justice training over the past six years.

The survey questionnaire targeted commanding officers (COs) and all other persons who were involved in the summary trial process: accused members, assisting officers, presiding officers, review authorities and charge-laying authorities. The survey was widely publicized throughout the CF and was made available to potential respondents on the Intranet and in paper form from 15 February to 7 March 2008. In total, 615 responses to this year's survey were received, and respondents included 61 former accused members, 135 assisting officers, 140 presiding officers, 88 COs, 12 review authorities and 179 charge-laying authorities. This number represents an 11% decrease in responses from the 2006–2007 reporting period during which there were 691 responses.

Additional efforts were undertaken to improve the methods of distribution of the survey this year. Lists of individuals who performed roles as presiding officers, assisting officers and charge-laying authorities between 1 April 2007 and mid-January 2008 were created and these members were then individually sent an electronic copy of the survey. This was in addition to the standard distribution methods that were used, including the issuance of a CANFORGEN, distribution of the survey through the chain of command and placing a link on the JAG web site and on the Department of National Defence Intranet.

Unfortunately, a technical problem was experienced with the electronic administration of the segment of the survey that was completed by former accused members. Of the 61 former accused members who took the survey, only 8 were able to complete all 36 questions in that portion. The other 53 former accused members were redirected to the JAG web site upon completion of question 13, so they were not able to complete the remaining 23 questions. Review of the cause of this disruption will be undertaken during the next reporting period so that appropriate measures can be taken to avoid this from occurring again in the administration of next year's survey.

Survey Results and Analysis

The format of the 2008 survey on the summary trial process was based on versions of the survey questionnaire used in previous years. In the past, changes to the survey format were limited to incremental modifications over the six years that the survey has been conducted in order to compile responses that focus on the same or similar areas of inquiry and to create a historical record of service members' views on these issues. There were some additions to this year's questionnaire. Further opportunities were provided for members to supplement their responses to specific questions with comments, if they wished. Additional questions were included to elicit further information regarding participants' knowledge and awareness of the process to request a review of the findings and/or punishments at summary trial. These questions were developed in response to the results of the 2007 Survey of the Summary Trial Process, in which 32% of the former accused members who participated said that they were not aware of the review process.

The survey continues to measure adherence to the three tenets of fairness in the summary trial system as detailed below:

Tenet 1: Compliance with regulatory requirements relating to the administration of military justice.

a. COs are certified by the JAG to perform their duties in the administration of the CSD after having successfully completed the Presiding Officer Certification Training (POCT).[11]

b. Each unit maintains a Unit Registry of Disciplinary Proceedings, which contains documents such as: Records of Disciplinary Proceedings, reports of investigation and decisions following the review of a summary trial.[12]

c. Records of Disciplinary Proceedings are completed correctly, including the final disposition of all charges, and submitted for review to the local Assistant Judge Advocate General or Deputy Judge Advocate and ultimately to the JAG.

d. Legal advisors and review authorities give timely feedback.

e. Requests from the public for access to Unit Registries of Disciplinary Proceedings are handled appropriately.[13]

This year's survey indicates a high degree of compliance among respondents with the regulatory requirements relating to the administration of summary trials. Similarly, survey results indicate that COs are complying with the regulations that require that they be qualified as presiding officers and maintain Unit Registries of Disciplinary Proceedings. The survey did disclose, however, that three respondents (one CO, one presiding officer and one review authority) had not been certified by the JAG in the administration of the CSD. A similar result was received from 2006-2007 survey, which was brought to the attention of field legal officers. The Director of Law/Military Justice Policy and Research will consult with Assistant Judge Advocates General and command legal advisors to develop measures for verifying that all presiding officers have been certified or have received an exemption from the Chief of the Defence Staff.[14] With regard to the provision of feedback, 91.4% of the responding COs indicated having received timely feedback from legal advisors.

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[11] QR&O, article 101.09.

[12] QR&O, article 107.14.

[13] QR&O, article 107.16.

[14] QR&O, article 101.09.

Tenet 2: Each accused receives fair treatment at summary trial.

a. Trials are held in the official language chosen by the accused.

b. Accused persons who are entitled to elect trial by court martial are given the opportunity and legal support to do so.[15]

c. Accused persons receive: [16]

   1. all information identified in the regulations;
   2. access to the evidence that will be used to support the charge; and
   3. a list of witnesses who will testify to support the charge.

d. Accused persons are given the opportunity to exercise their right to put their case to the presiding officer before a finding is made.[17]

e. Accused persons are given the opportunity to exercise their right to present evidence of mitigating considerations before sentence is passed.[18]

This year's results again demonstrated substantial compliance in all of these areas, which indicates that fair treatment was accorded to accused persons in the summary trial system. As a result of the technical difficulties in the administration of the survey to former accused members, discussed above, the results based upon these responses to some questions is limited, which makes it difficult to provide meaningful comparisons to the responses given in the 2006-2007 survey. For example, of the respondents who were former accused members:

a. Six of the eight respondents advised that they were given a choice to be tried in their first official language. One of the two respondents who answered in the negative advised that this was because it was known that he only spoke one official language.

b. Of the 26 respondents offered an election to be tried by court martial, 23 felt they had received sufficient time to consult a lawyer. Of the remainder, two requested additional time, and one request was granted. Similarly, 92.2% of assisting officers believed that the accused member was given sufficient time to consult a lawyer concerning whether to elect court martial.

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[15] QR&O, articles 108.17 and 108.18.

[16] QR&O, article 108.15.

[17] QR&O, article 108.20.

[18] *Ibid.*

c. 43 of the 59 respondents, indicated that they were given adequate information about the summary trial process. In relation to the type of information provided by assisting officers, of the 61 former accused members who responded, 43 indicated that the nature of the offence was explained to them, 35 advised that the difference between summary trial and court martial was explained, 29 indicated that they received information on the potential consequences of choosing summary trial or court martial, 28 were given a full explanation on the process they chose, and 29 were informed of the right to speak to military defence counsel.

d. 49 of the 55 respondents felt that they were given access to all the evidence that was used against them and 44 of 55 felt that they had been informed of all witnesses who testified against them. Both of these figures have increased slightly from last year. Of note, 98.5% of assisting officers felt that the accused had received all the information that was relied on at their summary trial.

e. Two of eight respondents indicated that either they or their assisting officer were permitted to question witnesses at their summary trial. Supplemental comments to this question were provided by five of the six accused that responded negatively to this question. Three said there were no witnesses, one admitted the particulars of the offence, and one advised electing court martial. In contrast, 87.4% of assisting officers responded that they or the accused were permitted to question each witness, which represents a decline from 93% last year. Of note, the presiding officers who responded had notably different opinions on how often the accused or the assisting officer questioned witnesses at summary trials over which they presided: 25.7% indicated that this "almost always" occurs, 46.4% said that it "sometimes" occurs 27.9% indicated that this "almost never" occurs.

f. Four out of seven of those respondents found guilty at summary trial responded that there were outside factors that they or their assisting officer asked to be considered by the presiding officer in mitigation of the sentence. This is in contrast to the 87.7% of assisting officers who responded that the presiding officer was asked to consider outside factors in mitigation of sentence.

For the second year, survey respondents were asked to comment on their perception of the fairness of the summary trial process. Responses indicated a strong confidence in the summary trial process from all perspectives including that of the accused. The number of positive comments related to fairness by presiding officers outnumbered negative comments by two to one. When accused members were specifically asked in what ways they felt the summary trial process was fair, the most common responses were:

a. being allowed to present evidence and question witnesses; and

b. the timeliness of the summary trial process.

These responses were largely the same as last year. As in last year's survey, respondents were also asked what they felt was unfair in the summary trial process. They were not given options to choose from and were requested to draft their own comments. Their responses addressed three general areas of concern:

a. **Training**: Concerns over assisting officer training are consistently raised each year in the Summary Trial Process Survey. Respondents advised that assisting officers were not sufficiently trained given the scope of their role, the potential consequences to the accused and the intricacies of the system. Many respondents felt that both practical training in the form of shadowing or mentoring was required, and that formal training specific to assisting officers should be provided. This concern was also noted in earlier surveys.

As indicated in the 2006-2007 Annual Report, support exists for the development of a comprehensive approach to assisting officer training. The appropriateness for additional assisting officer training was communicated to the Canadian Forces Military Law Centre (CFMLC) during the 2007-2008 reporting period. In response, the CFMLC advises that they expect to complete the design of an assisting officer training course addressing the spectrum of assisting officer roles and duties in the CF during the next reporting period. This course will have a particular emphasis on the roles and duties of assisting officers in the administration of military justice.

Efforts are continuing within the Office of the JAG to provide appropriate relevant training materials for assisting officers. These materials include the *Guide for Accused and Assisting Officers,* [19] which is available on the JAG website and provides accused service members and their assisting officers with a convenient summary of the differences between summary trials and courts martial. As well, an existing training package for units to conduct their own assisting officer training remains accessible on the JAG Intranet site.

b. **Timeliness**: This was the most frequently cited indication of unfairness in the summary trial system. It was the second most frequently mentioned aspect of unfairness, 10 comments of a total of 54, in the opinion of presiding officers. It was also cited, to a lesser degree, by a number of assisting officers, COs and charge-laying authorities as being an indication of unfairness. A representative comment provided by one assisting officer was "The current procedure takes a very long time to resolve something that should be over and done with in a matter of days". Interestingly, timeliness was cited even more frequently as an example of fairness in the summary trial system. It was the most frequently cited example of fairness in the system by COs, and charge-laying authorities and it was the second most often mentioned example of fairness by responding assisting officers and presiding officers. A typical comment was offered by one assisting officer who characterized the summary trial process as "fast, quick and can be done in the field". As discussed later in this report, efforts are continuing to address timeliness in the military justice system. One of these efforts is a working group, which was established during the reporting period to examine delay throughout the military justice system.[20]

c. **Bias**: Concerns over the existence of bias in the summary trial process were raised again in this year's survey and, in particular, by assisting officers and COs, who most frequently identified bias as an example of unfairness. Of the 72 comments on unfairness expressed by assisting officers, 22 related that conducting summary trials in the unit of the accused was unfair, and that there was an assumption of guilt towards the accused. COs identified the perception of bias among presiding officers as a concern that impacts the perception of fairness within the summary trial process in 6 of 23 responses. Bias was also raised as a concern in last year's survey.

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[19] The Guide is available at: http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers(Bilingual).pdf.

[20] See Chapter 7.

By their nature, summary trials are a form of service tribunal that permits disciplinary matters to be dealt with, as a general rule, at the unit level. Presiding officers are required to act impartially and separate their personal interests and beliefs from their decision-making powers and duties. Presiding officers also have an interest in the discipline of the unit, accordingly, the NDA and QR&O set out a number of specific requirements to enhance impartiality at summary trial:

1. unless it is unavoidable, COs who carry out or supervise an investigation, sign a search warrant or lay or cause a charge to be laid may not preside at the summary trial of the same matter;[21]
2. at the commencement of every summary trial, all presiding officers are required to take an oath or solemn affirmation to administer justice according to law, without partiality, favour or affection;[22] and
3. superior authorities are prohibited from intervening in any summary trial.[23]

During the reporting period, the issue of bias within the summary trial process was referred to the CFMLC with the request that additional guidance relating to the issue of bias be incorporated in military justice training. The CFMLC has advised that it will address this issue as part of the transformation that commenced during the reporting period of the POCT.[24] Through this initiative, POCT will be transformed to place a greater emphasis on the requirement for presiding officers to address the spectre of reasonable apprehension of bias as a continuing responsibility throughout all aspects of military justice administration.

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[21] *Supra* note 1, s. 163(2).

[22] QR&O, article 108.20(2).

[23] QR&O, article 108.04.

[24] See Chapter 5 for a discussion of this CFMLC initiative, which is a holistic review of the substance and delivery of the POCT.

Tenet 3: The system for reviewing the decisions made at summary trial is fair and responsive.

a. All accused persons are informed of their right to seek review.

b. The review process is efficient.

Previous survey results have indicated a low level of awareness among members found guilty at summary trial of their right to seek a review of the findings and the sentence passed by the presiding officer. After an increase in awareness of 10% between the 2005-2006 and 2006-2007 reporting periods, there has been a moderate decrease in the 2007-2008 period. During this reporting period, five of the eight accused respondents said they were aware of the right to request review of the findings and sentence at summary trial. This can be contrasted with the 95.6% of assisting officers who indicated that they informed the accused of the ability to request a review which is down slightly from last year.

Attempts to increase awareness through military justice training and the distribution of CF publications such as the *Code of Service Discipline and Me* and the *Guide for Accused and Assisting Officers* have had limited success.[25] To further address this, the CFMLC will be engaged in a number of projects over the next reporting period that will touch on the review process including focused training for assisting officers and a CSD Familiarization Project which will seek to ensure that CF members are sufficiently informed of all the procedural and substantive obligations and rights in the military justice system.

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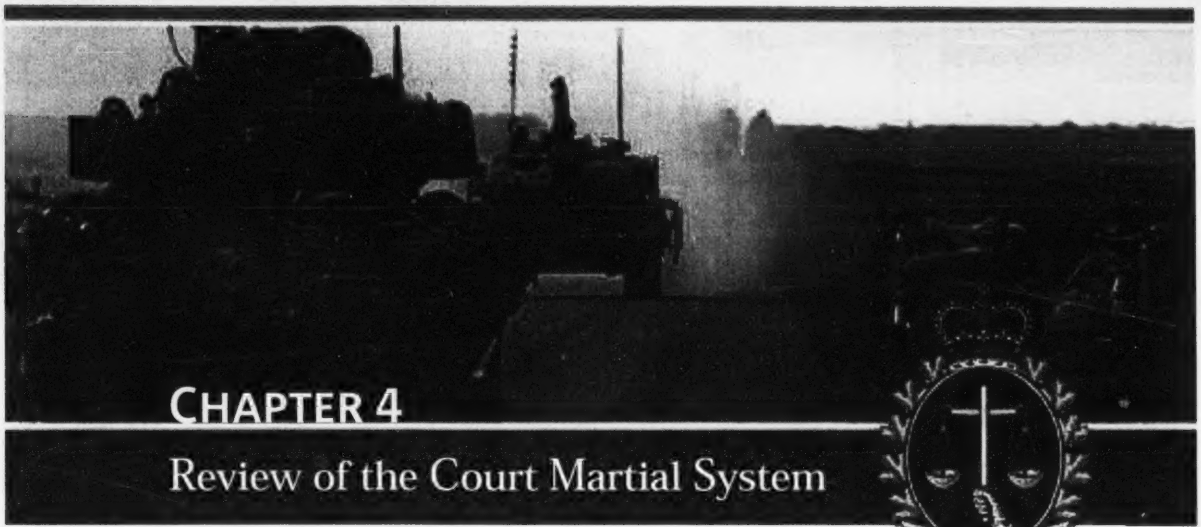
[25] These publications can be found in PDF at: http://www.forces.gc.ca/jag/training/publications/CSD_ME_e.pdf and http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers(Bilingual).pdf.

The right to seek a review of a finding and/or the sentence imposed at summary trial is an important element of the process. As such, it will continue to be a significant concern for the Office of the JAG to find ways that will increase the awareness of accused members, COs and presiding officers of this right. The summary trial statistics show that during the reporting period, 31 requests for review were made compared with 22 during the 2006-2007 period. Decisions and punishments were upheld in 35% of the reviews as compared to 50% in 2006-2007. The number of reviews where a finding was quashed remained largely unchanged at 42%. There were substituted punishments in 23% of reviews, whereas there were none in the 2006-2007 reporting period. While the reason for the increase in requests for review cannot be stated with certainty, it may reflect an increased awareness of members convicted at summary trial about the right to request a review.



CHAPTER 4

Review of the Court Martial System

4.1 INTRODUCTION

The second tier of the military justice system, namely the court martial system, is generally used to deal with the more serious breaches of military discipline. Courts martial are analogous to civilian criminal trials but maintain a distinct military character. Each court martial is composed of a military judge alone or a military judge with a panel of Canadian Forces (CF) members, which performs a function similar to a jury, and is prosecuted by legal officers from the Canadian Military Prosecution Service (CMPS). In addition, the accused is entitled to representation by either defence counsel from Defence Counsel Services (DCS), at public expense, or by civilian legal counsel at the accused member's own expense. This Chapter will examine the court martial system during the reporting period.

4.2 COURTS MARTIAL HELD DURING THE REPORTING PERIOD

During the reporting period, 78 courts martial were conducted, which represents a 16% increase from the number of trials conducted during the 2006-2007 period. As noted in the Annual Report of the Director of Military Prosecutions (DMP), contained in Annex C,[1] this is the highest number of courts martial completed in a single reporting period since the founding of the CMPS in 1999.

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[1] In accordance with article 101.11 of the *Queen's Regulations and Orders for the Canadian Forces* [QR&O] the DMP is required to report annually to the JAG.

Detailed statistics for courts martial conducted during the reporting period from 1 April 2007 to 31 March 2008 are included at Annex F.

4.3 OFFICE OF THE CHIEF MILITARY JUDGE (CMJ)

In the military justice system, military judges preside over courts martial and perform other judicial functions as provided under the *National Defence Act.*[2] The Governor in Council may appoint as a military judge an officer of the CF who is a barrister or advocate of at least ten years standing at the bar of any province in Canada. Military judges are appointed for a five-year term and are eligible for re-appointment on the recommendation of a renewal committee established by regulations.[3] During the reporting period, an amendment to the NDA was introduced in Bill C-45[4] in response to a recommendation from the report of the First Independent Review of Bill C-25(The "Lamer Report")[5] to give military justices security of tenure until retirement. Accordingly, military judges would have tenure until retirement, subject only to removal for cause based upon the recommendation of an Inquiry Committee established under the NDA.[6] Bill C-45 was before Parliament at the end of the Reporting Period and had not yet been passed into law.

Presently, the Office of the CMJ has its full compliment of four military judges, which includes the CMJ, Colonel Mario Dutil, Commander Peter Lamont, Lieutenant-Colonel Louis-Vincent d'Auteuil, and Lieutenant-Colonel Jean-Guy Perron.

The selection process for military judges is similar to that for other federal judicial appointments. The military judicial selection process is administered by the Commissioner for Federal Judicial Affairs, and the Military Judges Selection Committee is utilised to assess interested candidates. This Committee comprises five members appointed by Ministerial Order representing the judiciary, the civilian bar and the military community and its report is relied upon by the Minister when making recommendations to the Governor in Council on military judicial appointments. Assessments are conducted when the Committee is requested to do so by the Minister and are valid for a period of 36 months. Accordingly, a subsequent military judges selection process would normally be initiated within the 36 month period to ensure that a pool of interested candidates with valid assessments is available at all times.

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[2] R.S.C. 1985, c. N-5 [NDA], ss. 165.21–165.27.

[3] For appointment, security of tenure and removal, re-appointment and retirement age see NDA, s. 165.21.

[4] *An Act to Amend the National Defence Act*, 2nd Sess., 39th Parl., 2008 [Bill C-45]. Bill C-45 was introduced in Parliment on 03 March 2008 and is the successor to Bill C-7, which had originally been introduced in Parliament on 27 April 2006, but died on the Order Paper when Parliament was prorogued on 17 September 2007.

[5] Recommendation 5, The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25, *An Act to Amend the National Defence Act and to make consequential amendments to other Acts*, S.C. 1998, c. 35, was required under section 96 of the Bill. The Lamer Report is discussed in further details in Chapter 6 and may be accessed online at: www.forces.gc.ca/site/reports/review/en/report_e.pdf.

[6] *Supra* note 4 at cl. 38. The Bill is discussed in Chapter 6.

On 12 October 2007, the Minister wrote to the Office of the Commissioner for Federal Judicial Affairs to initiate the military judges selection process. Notice of the selection process and a solicitation for applications were subsequently sent to members of the CF on 28 November 2007 and the application period remained open until 1 February 2008.

As indicated in last year's Annual Report, the Court Martial Appeal Court (CMAC) upheld a court martial finding that specific aspects of the re-appointment process for military judges which is set out in regulations, were unconstitutional.[7] To address the specific deficiencies identified by the court martial and to enable a Renewal Committee to function, amendments were made to the QR&O during the reporting period. These amendments came into effect on 11 March 2008.[8] One notable change involved the composition of the Renewal Committee, which is now a committee of one comprising the Chief Justice of the CMAC.[9] These amendments are discussed further in Chapter 6.

With regard to compensation for military judges, the NDA requires that a review be conducted regularly by a Compensation Committee established under regulations.[10] Accordingly, the Military Judges Compensation Committee (MJCC) was established and is required to commence an inquiry into the remuneration of military judges every four years on the first day of September beginning on 1 September 1999.[11] According to this schedule, the latest MJCC was due to commence in September 2007, however, after a short postponement the MJCC commenced on 29 January 2008. The MJCC consists of three part-time members, with one person nominated by the military judges, another nominated by the Minister, and a chairperson nominated by the first two members. The members of the current MJCC are:

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[7] See pages 40-41, 2006-2007 JAG Annual Report at: http://www.forces.gc.ca/jag/office/publications/annual_reports/2007annualreport_e.pdf.

[8] QR&O, articles 101.15, 101.16 and 101.17.

[9] QR&O, article 101.15.

[10] *Supra* note 2, s. 165.22(2).

- Chair – the Honourable Guy Richard
- Minister's nominee – the Honourable David Gruchy, Q.C.
- Military Judges' nominee – the Honourable Claire L'Heureux-Dubé, Q.C.

The MJCC is expected to hold its hearing early in the next reporting period and will be required to deliver its final report to the Minister within nine months after commencing its inquiry.[12]

4.4 APPEALS

Under the NDA, decisions made by courts martial can be subject to two levels of appellate review. The first level of appeal is to the CMAC. The CMAC is authorized under the NDA to consider appeals brought by either the Minister or an individual who is subject to the *Code of Service Discipline* (CSD), in relation to those matters specified in the NDA.[13] The second level of appeal is to the Supreme Court of Canada (SCC). A decision of the CMAC can be appealed to the SCC by either the Minister or an individual subject to the CSD, in the circumstances set out in section 245 of the NDA.

Below is a table containing a summary of CMAC activity.

Reporting Period	Appeals Carried over[14]	Appeals Commenced	Appeals Disposed of	Appeals Discontinued/ Abandoned
2006/2007	5	8	3	2
2007/2008	8	10	7	1

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[11] QR&O, articles 204.23 to 203.27.

[12] QR&O, article 204.24.

[13] *Supra* note 2, ss. 230 and 230.1.

[14] These represent Appeals commenced in prior reporting periods and carried over to subsequent reporting periods.

During the reporting period, seven appeals were disposed of by the CMAC. Three of these matters received a hearing before the CMAC and written decisions were released by the Court; they are discussed below. Leave to appeal to the SCC was sought by the DMP in relation to the case of *R. v. Grant*,[15] however, leave in that case was not granted.

Individuals who initiate an appeal may be represented at public expense by defence counsel from the Defence Counsel Services. It is the Appeal Committee that is responsible for determining whether an appellant will be provided representation at public expense. As was reported in the two most recent JAG Annual Reports, several recommendations had been made in the Lamer Report to improve the functioning of the Appeal Committee, and that those recommendations would be implemented in regulations. Bill C-45[16] includes a provision that would implement the recommendation from the Lamer Report to reference the committee in the NDA.[17] Bill C-45 was before Parliament on 31 March 2008, and had not yet been passed into law.[18]

R. v. Grant[19]

In June 2006, Corporal (Cpl) Grant was found guilty at Standing Court Martial of assault causing bodily harm in relation to a fight that occurred on 15 April 2004. Under paragraph 69(*b*) of the NDA, a person cannot be tried by summary trial for an offence unless the summary trial commences within one year of the day that the alleged offence took place. Accordingly, Cpl Grant was tried by court martial. At the commencement of the court martial in April 2006, Cpl Grant applied for a stay of proceedings on the grounds that due to the delay in bringing his matter to court martial, his rights under section 7 and subsection 11(*b*) of the *Canadian Charter of Rights and Freedom* (*Charter*) had been violated.[20] Cpl Grant's application was dismissed, and upon being found guilty, he was sentenced to 30 days detention and ordered to provide a DNA sample.

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[15] [2007] S.C.C.A. No. 392.

[16] *Supra* note 4, cl. 76.

[17] *Supra* note 5, Recommendation 29.

[18] The purpose and status of Bill C-45 is discussed in greater details in Chapter 6.

[19] [2007] C.M.A.J. No. 2.

[20] Section 7 of the *Charter* provides that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Subsection 11(*b*) of the *Charter* provides that anyone charged with an offence has the right "to be tried within a reasonable time."

Cpl Grant appealed the military judge's findings on the stay application as well as the finding of guilty to the CMAC. The CMAC allowed the appeal, annulled the court martial proceeding, set aside the finding of guilty, ordered the destruction of the DNA samples taken and remitted the matter to a commanding officer (CO) to decide whether it was advisable to try the charge by summary trial.

While the CMAC noted that there was a delay of two years and eleven days during the pre-charge and post-charge period, it ruled that the appellant's section 11 *Charter* rights were not infringed. In its reasoning, the Court instead relied on section 162 of the NDA, which states "charges under the CSD shall be dealt with as expeditiously as the circumstances permit". The Court found that the evidence at court martial suggested that it was highly unlikely that the mode of trying the charge would have been otherwise than by summary trial, which was not possible due to the limitation period in paragraph 69*(b)* of the NDA. The court inferred that "there was a legitimate expectation that the procedure that would be used to deal with the charge would be the summary procedure" and that this did not occur because of "inordinately long delay in processing the charge". The CMAC ruled that the appellant was prejudiced by the delay and entitled to some remedy; otherwise section 162 of the NDA would lose its significance. The CMAC reasoned that Cpl Grant, by requesting the remedy of a new trial, had given up his right, established in paragraph 69(*b*) of the NDA, to a one-year limitation period from the date of the offence to be tried by summary trial. Accordingly, the Court ordered that the matter be remitted to a CO for a summary trial of the charge, and if a summary trial were to be held, the appellant would be deemed to have renounced the benefit of the limitation period in paragraph 69(*b*) of the NDA. As a result of this finding, the CMAC found it unnecessary to determine whether there had been a breach of section 7 of the *Charter*.

An application for leave to appeal the judgment to the SCC, made by the DMP on 23 August 2007, was dismissed by the SCC on 31 January 2008.[21]

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[21] *Supra* note 15.

R. v. Taylor[22]

Private (Pte) Taylor pled guilty at Standing Court Martial on 18 January 2007, to one charge of possession of marijuana and one charge of trafficking in cocaine. Subsequently, the prosecution and the defence made a joint submission requesting a sentence of 40 days detention and a fine of $1,000.00. The military judge refused the joint submission and sentenced Pte Taylor to 40 days imprisonment and a fine of $1,000.00. In denying the joint submission, the military judge stated: "… the sentence proposed to this Court by the prosecution and by the accused is not in the public interest; this public interest being the interest of the Canadian Forces in strongly denouncing the trafficking of serious drugs such as cocaine".[23]

Pte Taylor appealed the sentence imposed on the basis that the military judge erred in law in not giving effect to the joint recommendation. The CMAC dismissed the appeal. The CMAC held that the final authority to impose a sentence resides with the Court, and the military judge had cogent reasons to depart from the joint recommendation. The CMAC deferred to the views expressed by the military judge at the Court Martial that the "use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our forces and a threat to the security of our personnel and equipment".[24]

R. v. LeGresley[25]

Ex-Pte LeGresley was found guilty at Standing Court Martial on 15 December 2006, of two charges of trafficking in cocaine. The charges were laid on 21 September 2005, which was approximately 15 months prior to the commencement of the court martial. The military judge dismissed a preliminary motion brought by the accused to have the charges stayed due to unreasonable delay in bringing the matter to trial. Ex-Pte LeGresley appealed his conviction on the grounds that his rights protected under section 11(*b*) of the *Charter* had been violated and that the findings of the military judge were unreasonable.

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[22] [2008] C.M.A.J. No. 1.

[23] *Ibid.* at para. 14.

[24] *Ibid.* at para. 27.

[25] [2008] C.M.A.J. No. 2.

The CMAC dismissed the appeal. The CMAC reviewed the issue of unreasonable delay and identified the following specific factors to be considered when determining whether a delay is unreasonable: the length of the delay; whether there was a waiver of time periods by the accused; the reasons for the delay; and whether there was prejudice to the accused. Despite the findings of the CMAC that there was significant delay and that the accused had not waived his section 11(*b*) rights, the CMAC concluded that the delay was not unreasonable. In considering the reasons for the delay, the CMAC found that the accused had not been fully diligent in his conduct. The Court cited the accused's limited efforts to contact defence counsel over the course of a six month period, his non-responsiveness to queries from the Acting Court Martial Administrator regarding his availability for trial and his failure to request disclosure of the Crown's case in a timely manner. The CMAC concluded that the evidence did not establish that the member had suffered any prejudice as a result of the delay and, therefore, it found that the delay in this case was not unreasonable. The CMAC further held that the findings of the military judge were reasonable.

4.5 FEDERAL COURT OF CANADA (FCC) JUDICIAL REVIEW

During the reporting period, there was one case relevant to the military justice system involving a judicial review at the Federal Court of Appeal (FCA) in the matter of *Canada (Director of Military Prosecutions) v. Canada (Court Martial Administrator)*.[26] Details of the original application were provided in the 2006-2007 Annual Report.[27] It involved the refusal of the CMJ to assign a military judge to preside at a court martial on the grounds that the charge sheet was classified "SECRET," and that doing so would offend the open court principle. The Court Martial Administrator (CMA) was, therefore, unable to convene a court martial. DMP made an application to the FCC for writs of mandamus to compel the CMJ to assign a military judge and for the CMA to then convene a court martial. The FCC denied the application and the DMP filed a notice of appeal of this decision to the FCA.

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[26] [2007] F.C.J. No. 1650.

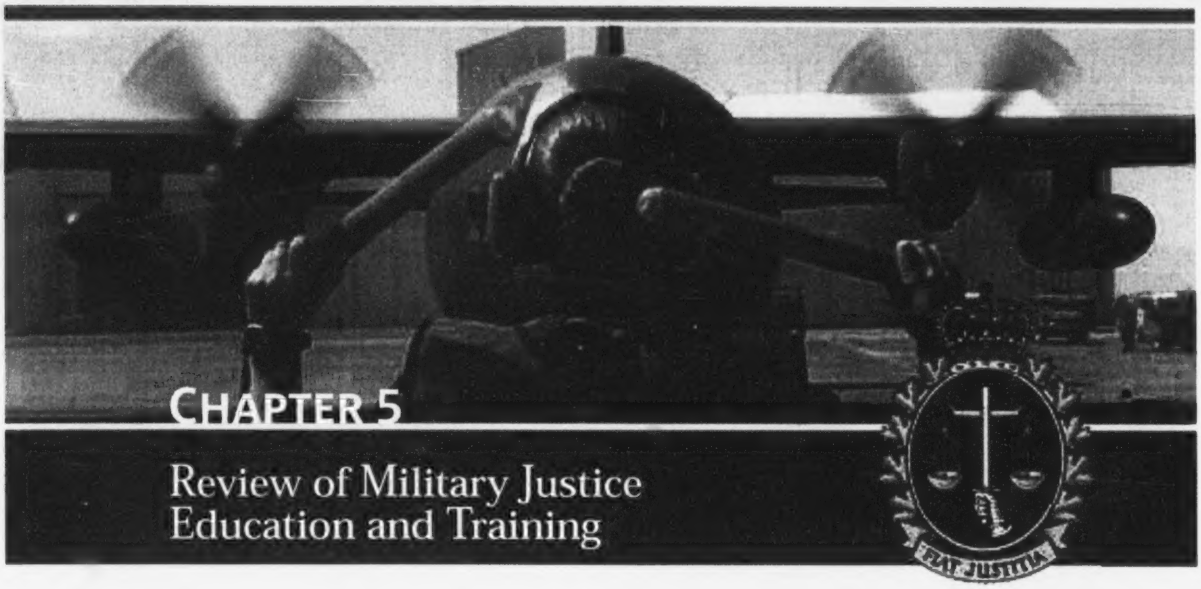
[27] See page 42, 2006-2007 JAG Annual Report at: http://www.forces.gc.ca/jag/office/publications/annual_reports/2007annualreport_e.pdf.

A hearing was held before the FCA on 13 November 2007 and a judgement was delivered on 10 December 2007. In its judgment, the FCA overturned the FCC decision, and held that the open court principle was not offended by sealing the charge for a time in order to allow a military judge to assess the issue of confidentiality. It further held that the question to be answered was whether or not the DMP had alternative means to sealing the charge sheet pending the assignment of a military judge in order to have the issue of confidentiality decided. In the view of the FCA, there was no alternative avenue open to the DMP. It followed that the CMJ had the duty to assign a military judge and the CMA had the corresponding duty to convene a Standing Court Martial. The FCA issued the writ of mandamus requiring the CMJ and CMA to take these steps.

4.6 DIRECTOR OF DEFENCE COUNSEL SERVICES (DDCS) ANNUAL REPORT

In accordance with article 101.20 of the QR&O, the DDCS is required to report annually to the JAG. The DDCS Report is found at Annex D. A number of issues are raised by DDCS in his Annual Report concerning the administration of military justice. As is acknowledged in that Report, many of these issues, particularly those relating to budgetary matters, have been resolved through work done this past year by the DCS office and the Office of the JAG. In addition, in order to ensure matters raised by the DDCS are fully addressed, personnel from the Office of the JAG will be working closely with the DDCS not only to address issues raised in the DDCS Report but also any other matters that may arise in the next reporting period. This working group will address issues such as budget, computer and network support and the concerns expressed regarding pre-trial custody hearings. Of particular concern are the comments by the DDCS relating to the level of support provided to accused persons who are suffering from mental health issues. The working group will be focusing on identifying the full nature and scope of the issues raised by the DDCS and will work closely with the Chief of Military Personnel to resolve these issues.

In addition, there will be a significant initiative undertaken during the next reporting period that could impact directly on the provision of defence counsel services. That external review will look at the DCS organization, structure, human resource management, policies and practices to identify ways to make the delivery of defence counsel services as effective and efficient as possible. That initiative, together with the military justice delay working group, will enhance the effectiveness of the military justice system.



CHAPTER 5

Review of Military Justice Education and Training

5.1 INTRODUCTION

The Office of the JAG provides assistance in the provision of military justice training and education to the Canadian Forces (CF) community, which is aimed at three groups. The first group comprises the CF community as a whole so that all CF members have access to information about their rights and obligations under the *Code of Service Discipline* (CSD). The second group comprises those CF members who fulfill specific roles in the administration of military justice, such as commanding officers (COs) and summary trial presiding officers, who require military justice training tailored to those roles and senior non-commissioned members who administer the military justice system at the summary trial level. The third group comprises legal officers who require specific training on military law based on both their rank and progression within the legal branch.

5.2 GENERAL CF TRAINING AND EDUCATION

Canadian Forces Military Law Centre (CFMLC)

During this reporting period, a significant milestone for military justice education and training in the CF was achieved when the CFMLC was stood up on 30 November 2007. The CFMLC forms part of the Canadian Defence Academy (CDA) located in Kingston, Ontario and is staffed by legal officers who come under the command of the CDA. The CFMLC represents the culmination of efforts to establish an organization capable of developing effective new methods for the delivery of operationally-focused military legal education, training and doctrine for the CF. Accordingly, the review of military justice education and training undertaken during the reporting period includes that provided under the auspice of the CFMLC and its predecessor organizations: the JAG Directorate of Law/Training and the Office of Military Legal Education in Kingston, as well as military justice training given at units that are under command of the CDA.

Military Justice Training

It is important that all members of the CF have a level of knowledge about the military justice system, including their rights and obligations under the CSD. All CF members receive training in the basic tenets of the military justice system, including familiarization with the CSD, during their basic training at the CF Leadership and Recruit School in Saint-Jean-sur-Richelieu. Similar training is also provided to officer cadets undergoing their preparatory year at Richelieu Squadron in Saint-Jean-sur-Richelieu prior to attending Royal Military College in Kingston. During the reporting year a total of 6,781 regular force and 5,009 reserve force officers and non-commissioned members received military justice training in this manner.

While the JAG is not mandated to provide general training on military justice, the Office of the JAG, through primarily the legal officers and chief warrant officers/chief petty officers 1st class (CWOs/CPO1s) in the regional legal offices, provides direct support to the chain of command with regard to such training. During the reporting period, in addition to providing general military justice training support, legal officers and the CWOs/CPO1s from the Assistant Judge Advocate General and Deputy Judge Advocate offices provided military justice instruction on numerous established courses including the Intermediate Air Environmental Qualification Course, the Ship Coxswain Course and the CF Primary Leadership Qualification Course.

Throughout the reporting period, legal officers also provided considerable support to the military law course of the Officer Professional Military Education Program (OPME). The OPME program includes courses on defence management, Canadian military history, leadership and ethics and military law. The successful completion of the program is required for officers to be promoted to the rank of major or lieutenant-commander. Each OPME course is delivered either through distance learning or during on-site serials that are conducted at different locales throughout the year. During the reporting period, the OPME on military law was successfully completed by a total of 859 students on the English serial and 264 students on the French serial.

In July 2007, the Government of Canada announced its intention to re-establish the military college at Saint-Jean-sur-Richelieu as an independent military educational institution with a primary mission to deliver a two-year CEGEP program, commencing in 2008. With the stand up of the Royal Military College in Saint-Jean-sur-Richelieu, the need to consider the provision of military justice training within this institution was identified and the CDA is expected to examine this issue in the near future.

5.3 TRAINING FOR THE ADMINISTRATION OF THE MILITARY JUSTICE SYSTEM

Presiding Officer Certification Training (POCT)

The JAG is responsible to provide training and certify superior commanders, COs and delegated officers in the administration of the CSD at the summary trial level.[1] The POCT was specifically designed to meet this requirement, and as such, it provides candidates with the tools necessary to discharge their duties in the administration of the CSD. During the reporting period, 797 CF members were certified through these courses. While POCT is primarily intended for the training of prospective presiding officers, this training is also beneficial to senior non-commissioned members who perform key roles in the maintenance of discipline within their units. During the reporting period, 261 non-commissioned members attended this training. A total of 42 POCT in-service serials were conducted throughout the CF, with 39 POCT serials delivered in English and 3 serials delivered in French.

The CFMLC is undertaking a project called Presiding Officer Certification Training Transformation, which is a comprehensive review of the substance and delivery of the existing POCT course. This project also includes the review and development of enhanced training for two related subjects: unit investigations and charge laying, which is discussed later in this Chapter. During the reporting period, progress was made on this project through the development of a more comprehensive combined distance learning/in-service format that addresses the administrative issue of training via interactive computer based distance learning programs. This type of training delivery will permit course candidates to receive greater emphasis on the mechanics of presiding at a summary trial, including greater critical analysis of presiding officer methods, through demonstration videos.

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[1] QR&O, articles 101.09 and 108.10 (2)(a)(i). Before superior commanders and COs assume their duties, they must be trained in the administration of the CSD in accordance with a curriculum established by the JAG and certified by the JAG as qualified to perform their duties in the administration of the CSD.

In light of the pending changes to the format and content of the POCT, CFMLC will undertake a comparative review of the military justice portion of the OPME on military law with the POCT course. The purpose of this review will be to determine whether prior completion of the revised POCT would permit an OPME student to receive a Prior Learning Assessment Review credit for the military justice module of the OPME serial. This determination will be made during the 2008-2009 reporting period.

Presiding Officer Re-Certification Test (PORT)

POCT certification is valid for four years from the date of successful completion of the training. At the end of this period, re-certification is required and may be achieved by either attending another POCT course or completing the PORT.

The PORT is a randomly-generated, 90-minute online test that was launched in October 2003. Re-certification is achieved by successfully completing this test. Should a candidate receive a failing grade after attempting the online PORT, the officer is given the opportunity to rewrite the test after a suitable time delay. In the event of a second failure, the officer is then required to attend another two-day POCT course in order to be re-certified. During the reporting year, 253 members were re-certified by means of the PORT.

5.4 ADDITIONAL TRAINING INITIATIVES

Military justice surveys conducted during the 2006-2007 reporting period identified the need for additional training for CF members related to three specific issues: the role and duties of assisting officers; bias; and the right to request review of a summary trial result.[2] As a result, the JAG requested that the CFMLC assist in developing the appropriate training to respond to these matters. In addition to the planned inclusion of enhanced training related to bias in the POCT and OPME reviews discussed above, the CFMLC expects that the following projects will be undertaken during the 2008-2009 reporting period.

Bias

In response to a request by the JAG to consider the issue of bias in the summary trial process, which was identified as an issue in last year's Annual Report, the CFMLC will amend POCT to place a greater emphasis on the requirement for presiding officers to address concerns of bias.

Training for Assisting Officers

During the next reporting period, the CFMLC is expected to complete the design of an assisting officer training course. This course will address the broad spectrum of assisting officer roles and duties in the CF, with a particular emphasis on the roles and duties in the administration of military justice. This training is expected to be delivered via self-paced computer training through the Department of National Defence Learn network.

Unit Investigator and Charge-Laying Authority Training

The CFMLC has identified that, with the change of focus being introduced during the in-service training portion of POCT towards the mechanics of presiding over summary trial proceedings, there is a need for further training in the conduct of unit disciplinary investigations and charge laying. CFMLC expects to address this requirement through the design and delivery of dedicated training aimed at senior non-commissioned members and junior officers that focus on the development of these skill sets.

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[2] See pages 30-32, 2006-2007 JAG Annual Report at: http://www.forces.gc.ca/jag/office/publications/annual_reports/2007annualreport_e.pdf

Code of Service Discipline Familiarization Project

CFMLC is expected to examine feasible options for better ensuring that CF members are sufficiently informed of procedural and substantive obligations and rights that exist in the military justice system. This will be accomplished through increased emphasis on these matters in the course of the design and delivery of training in general. More particularly, this project will also include an examination of the feasibility of a CF-wide poster campaign aimed at informing CF members of their procedural rights under the CSD.

Review Authority Enhancement Training

During the 2008-2009 reporting period, the CFMLC is also expected to design a distance learning computer based course and associated reference materials concerning the role, function and procedural considerations for senior officers who will act as review authorities in relation to matters at summary trial. Aimed at amplifying the information currently imparted during POCT, the review authority training will serve as a useful tool for officers who assume positions wherein they could be required to act as a review authority and for use as a point of reference and periodic refresher to aid review authorities in the proper execution of their duties.

Referral Application Aide-Memoire

CFMLC is expected to generate a reference document designed to assist referral authorities with the efficient generation of referral applications for courts martial. The document will identify the best practices for compliance with the regulations and for maximizing the utility of a referral application to the Director of Military Prosecutions (DMP) in the preparation of court martial prosecutions. It will serve as a useful desk reference for command and staff officers required to generate referral applications, as well as for referral authorities tasked with the referral of a charge to the DMP.

5.5 MILITARY JUSTICE LEGAL OFFICER TRAINING

Entry Level Training

Lawyers rarely have the opportunity to study military law at law school and never during bar admission courses. Therefore, to prepare them for their duties, all new legal officers must undergo a rigorous training program that includes self-study courses, in-class training, and on-the-job training. This training program was carefully designed to provide instruction in each of the three pillars of military law (military justice, military administrative law and operational law). With regard to military justice, in particular, all legal officers at this stage are required to successfully complete the POCT, undergo a self-study program on military justice which is followed by an online test, and to act as junior counsel in the prosecution or defence of an accused at court martial.

Legal officers must also undergo intermediate training in the areas of military justice and administrative law, operational law, and the law of armed conflict. These three intermediate courses are required for promotion to major or lieutenant-commander. During this reporting period, 13 legal officers attended both the Legal Officer Intermediate Training (LOIT) Operational Law course and the LOIT Military Administrative Law and Military Justice course. Additionally, 10 legal officers attended the LOIT Law of Armed Conflict course and a total of 48 legal officers participated in two Legal Officer Advanced Training courses on Boards of Inquiry.

Continuing Legal Education

In addition to the entry-level training, the Office of the JAG actively promotes continuing legal education and, through the office of the Chief of Staff/Judge Advocate General (COS/JAG), provides the necessary funding for legal officers to attend courses, conferences, seminars and symposia relevant to the three pillars of military law. During the reporting period, legal officers participated in supplemental training and education programs relevant to military justice, including courses on criminal law and advocacy training. Specifically, in July 2007, 17 legal officers attended the 2007 Federation of Law Societies National Criminal Law Program in Edmonton, Alberta. Additionally, a number of legal officers attended criminal and constitutional law focused seminars and conferences sponsored by organizations outside of the CF.

Further, on an annual basis, the Office of the JAG conducts a two-and-a-half day continuing legal education workshop. While the themes of the workshops change from year to year, military justice issues are normally allocated time on the workshop timetable.

The military justice portion of the workshop held during the reporting period focused on current legislative initiatives and the issue of delay within the military justice system.

5.6 JAG DELEGATION VISIT OUTSIDE OF CANADA

In January 2008, two legal officers from the Office of the JAG were invited to visit Tanzania and conduct a seven-day intensive training session on military law for approximately 20 legal officers from the Tanzania People's Defence Force. This initiative was sponsored by the Military Training Assistance Programme and involved presentations on a number of subjects including the Canadian military justice system, the historical development of the *National Defence Act*[3] and a summary of operational law. The team was lead by the Deputy Judge Advocate General/ Military Justice and Administrative Law.

5.7 FOREIGN DELEGATION VISITS

During the reporting period, two foreign delegations were hosted by the Office of the JAG for the purpose of sharing information about the Canadian system of military law.

First, in April 2007, the Australian Director of Military Prosecutions (DMP), Brigadier Lyn McDade, the first statutorily appointed independent DMP in Australia, visited the Office of the JAG to gain an understanding of the workings of the Canadian military justice system. During this visit, the Australian delegation was briefed on the organization and structure of the JAG and the Canadian Military Prosecution Service (CMPS), as well as various topical issues facing the CMPS. Further, the Australian DMP gave a lecture to Canadian legal officers on the Australian military justice system.

Second, in February 2008, a delegation from Tanzania comprising two legal officers with the Tanzania People's Defence Force traveled to Kingston, Ontario to participate in the LOIT Military Administrative Law and Military Justice course. This course was delivered by the CFMLC from 19 to 29 February 2008 and is required training for all Canadian legal officers. The Tanzanian delegation visit was sponsored by the Military Training Assistance Programme.

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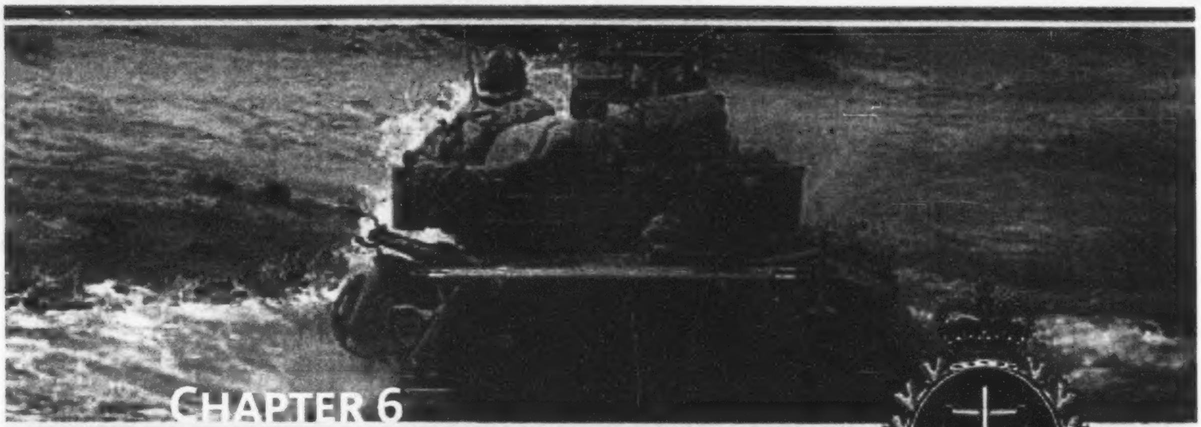
[3] R.S.C. 1985, c. N-5.



CHAPTER 6

Legislative, Regulatory and Policy Initiatives

6.1 INTRODUCTION

In addition to the mandate to superintend the administration of military justice in the Canadian Forces (CF), the JAG is responsible to provide support to the Minister and the CF in relation to any legislative, regulatory and policy initiatives related to military justice. This responsibility involves identifying and developing policies as required for the enhancement of the military justice system as well as providing direct support for all legislative and regulatory initiatives relevant to the military justice system. This Chapter highlights the legislative, regulatory and policy initiatives that have been advanced during the reporting period.

6.2 LEGISLATIVE AMENDMENTS

Bill C-7, *An Act to amend the National Defence Act*[1]

In 1998, amendments were made to the *National Defence Act*[2] through the passing of Bill C-25, *An Act to amend the National Defence Act and to make consequential amendments to other Acts*[3] which effected significant change to the military justice system. In order to assess the efficacy of these changes, the amendments included a provision requiring that an independent review of the provisions and operations of Bill C-25 be conducted within five years of the Bill receiving Royal Assent. As a result, in March 2003, the Minister of National Defence appointed the late Right Honourable Antonio Lamer, former Chief Justice of the

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[1] 1st Sess., 39th Parl., 2006 [Bill C-7].

[2] R.S.C. 1985, c. N-5 [NDA].

[3] S.C. 1998, c. 35 [Bill C-25].

Supreme Court of Canada, to conduct the first independent review. The report containing Justice Lamer's recommendations (the "Lamer Report") was submitted to the Minister on 3 September 2003 and was tabled in Parliament on 5 November 2003.[4]

Bill C-7, which contained the Government of Canada's legislative response to the recommendations made in the Lamer Report, was introduced in Parliament on 27 April 2006. Bill C-7 died on the Order Paper when Parliament was prorogued on 17 September 2007.[5]

Bill C-45, *An Act to amend the National Defence Act and to make consequential amendments to other Acts*[6]

After Bill C-7 died on the Order Paper, a new bill containing the Government's legislative response to the Lamer Report was developed. The new bill, Bill C-45, was introduced in Parliament on 3 March 2008. The amendments proposed in Bill C-45 would implement many of the recommendations contained in the Lamer Report and, while some changes in content were made from what was contained in Bill C-7, Bill C-45 largely mirrors the contents of Bill C-7.

In summary, the amendments proposed in Bill C-45 would:

- provide for security of tenure for military judges until their retirement;
- permit the appointment of part-time military judges;
- elaborate the purposes, objectives and principles of sentencing in the military justice system;
- provide for additional sentencing options, including absolute discharges, intermittent sentences and restitution orders;
- require the unanimous decision of a court martial panel to find an accused guilty or not guilty;
- provide the Court Martial Appeal Court of Canada (CMAC) the authority to suspend a sentence;

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[4] The Lamer Report may be accessed online at: www.forces.gc.ca/site/reports/review/en/report_e.pdf.

[5] For a discussion of Bill C-7 see page 54, 2006-2007 JAG Annual Report at: http://www.forces.gc.ca/jag/office/publications/annual_reports/2007annualreport_e.pdf

[6] 2nd Sess., 39th Parl., 2008 [Bill C-45].

- set out the duties and functions of the Canadian Forces Provost Marshal;
- enhance the timeliness and fairness of the military police complaints process;
- expand the ability of the Chief of the Defence Staff to delegate his or her powers as a final authority in the grievance process; and
- provide an explicit requirement in the NDA to conduct future independent reviews of the military justice system, the military police complaints process and the grievance process.

As at the end of the reporting period, Bill C-45 had not been called for second reading.

Bill C-18, *An Act to amend certain Acts in relation to DNA identification*[7]

Bill C-18, *An Act to amend certain Acts in relation to DNA identification*, received Royal Assent on 22 June 2007 with the majority of sections coming into force on 1 January 2008. The purpose of the Bill was to amend the *Criminal Code*, the *DNA Identification Act* and the NDA to facilitate the implementation of Bill C-13, *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*,[8] along with other amendments related to the DNA identification scheme.

6.3 REGULATORY AMENDMENTS

Amendments to the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) relating to the Re-appointment of Military Judges

As described in last year's Annual Report, the CMAC upheld a court martial decision that certain aspects of the re-appointment process for military judges, who are appointed for five-year terms, which is set out in regulation is unconstitutional.[9] In order to address the specific deficiencies identified by the court martial and to provide a Renewal Committee that could function, amendments were made to the

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[7] S.C. 2007, c. 22 [Bill C-18].

[8] S.C. 2005, c. 25 [Bill C-13].

[9] *R. v. Dunphy*, [2007] C.M.A.J. No.1.

QR&O. The composition of the Renewal Committee was changed. It is now a committee of one comprising the Chief Justice of the CMAC. As a further result of the amendments, the sole direction given to the Renewal Committee is that when making a recommendation on re-appointment, the record of judicial decisions of the military judge seeking re-appointment must not be considered. The amendments to the QR&O came into effect on 11 March 2008.[10]

Amendments to the QR&O relating to Bill C-10, *An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*[11]

Bill C-10 received Royal Assent on 19 May 2005. A number of amendments came into force on 30 June 2005 and the remaining provisions came into force on 2 January 2006. The Bill amended the *Criminal Code* and the NDA provisions governing persons found unfit to stand trial or not criminally responsible on account of mental disorder. Among other things, the Bill permits a court martial to hold an inquiry and order a judicial stay of proceedings for an accused found unfit to stand trial in circumstances where the accused is not likely to ever be fit to stand trial, does not pose a significant risk to the safety of the public and a stay is in the interests of the proper administration of justice. Amendments to the QR&O are required in order to support the amendments made to the NDA. To that end, significant efforts were undertaken during the reporting period to advance the regulatory amendments associated with Bill C-10 and they are expected to be completed during the next reporting period.

Regulations relating to Bill S-3, *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*[12]

Bill S-3, which introduced amendments to the NDA to bring the military justice system in harmony with the civilian criminal justice system regarding the registration of offenders who have been convicted of designated sexual offences at court martial, received Royal Assent on 29 March 2007. Before these amendments are brought into force, regulations are required to establish CF registration centres both in and outside of Canada along with the mechanisms by which individuals who are required to register at a CF registration centre would do so. The drafting of these regulations commenced near the end of the 2006-2007 reporting period, continued during the current reporting period and will be completed during the 2008-2009 reporting period.

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[10] QR&O, articles 101.15, 101.16 and 101.17.

[11] S.C. 2005, c. 22 [Bill C-10].

[12] S.C. 2007, c. 5 [Bill S-3].

Amendments to the QR&O relating to Bill C-13 and Bill C-18

Certain sections of Bill C-13[13] as well as Bill C-18[14] came into force on 1 January 2008. As a result, amendments to the QR&O that mirror the Forms in the *Criminal Code*, while taking into account their use in the military justice system, are required to reflect and support the legislative amendments. Preparations for these regulations were undertaken during the 2007-2008 reporting period, and they are expected to be completed during the next reporting period.

6.4 POLICY INITIATIVES

Military Justice Committees

As noted in the 2006-2007 Annual Report, a new committee with a specific focus on the administration of military justice, the Administration of Military Justice Committee (AMJC), was created during that period. The AMJC is co-chaired by the Chief Military Judge (CMJ) and the JAG and its membership includes a representative from the Canadian Military Prosecution Service (CMPS), Defence Counsel Services (DCS), Deputy Judge Advocate General/Military Justice and Administrative Law (DJAG/MJ&AL) and Directorate of Law/Military Justice Policy and Research (DLaw/MJP&R).

The mandate of the AMJC is to review and study issues related to the administration of military justice. It met three times over the reporting period. During the reporting period, the AMJC received briefings on and considered a number of issues, which included the possible selection methods for court martial panel members, initiatives to examine and address delay in the military justice system, initiatives to enhance efficiency of the court martial processes including the introduction of scheduling and coordinating conferences and pre-charge conferences involving the military judge, the prosecutor and the defence counsel.[15]

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[13] *Supra* note 8.

[14] *Supra* note 7.

A subcommittee of the AMJC was created during the reporting period to examine the procedures and protocols at court martial as set out in the publication entitled *Court Martial Procedures*[16] which is issued by the CMJ. The subcommittee included representatives from DDCS, CMPS, DLaw/MJP&R, National Defence Headquarters Directorate of History and Heritage and the JAG Chief Warrant Officer. The objective of the subcommittee was to identify procedures and practices that would benefit from updating and to recommend changes that could be made to the CMJ for approval and implementation. This subcommittee submitted a report containing a number of recommended changes, which was briefed to the AMJC. The CMJ advised that amendments to the court martial procedures document were expected to come into effect in the next reporting period.

As discussed in previous Annual Reports, the Office of the JAG and the Chief Justice of the CMAC have explored the possibility of creating a committee to examine the CMAC Rules. These discussions continued during the reporting period with a number of options being identified through communications between the Chief Justice of the CMAC and the Office of the JAG.

Military Justice Delay

Like the civilian justice system, the military justice system also has challenges regarding delay in getting matters dealt with at trial by a service tribunal. During the reporting period, a number of initiatives have been undertaken to begin addressing this concern.

In support of his responsibility to superintend the military justice system, the JAG directed the formation of a working group.

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[15] In this context, pre-charge is referring to a process before the Military Judge gives the charge or direction to the Court Martial panel after all the evidence is heard and before the Panel deliberates on the finding.

[16] http://www.forces.gc.ca/cmj/docs/CMProcedures_bil.pdf.

This working group comprised representatives from the Canadian Forces National Investigative Service and Deputy Provost Marshal Police Services, Environmental Command Staff, Director Military Prosecutions (DMP), Deputy Judge Advocate General/Regional Services and DLaw/MJP&R. This working group met three times over the reporting period, and its mandate is as follows:

- examine the current practices and procedures in the military justice system for the purpose of identifying areas where efficiency and expediency can be gained;
- identify feasible long-term options for enhancing efficiency and expediency;
- develop an action plan involving proposed changes to the practices and procedures within the military justice system that will enhance timeliness while at the same time address the specific needs and circumstances of the various actors in the system; and
- report to the JAG on the identified options and proposed action plan.

Work was continuing at the end of the reporting period.

Additionally, meetings involving representatives from the CMPS, the DJAG/MJ&AL division and the regional Assistant Judge Advocates General were held to discuss issues related to legal support in the course of the disciplinary process. From these meetings, concrete proposals were developed to address sources of delay at the various stages of the disciplinary process.

As a separate initiative, an external review of the practices and procedures of the CMPS was initiated. The objective of the external review was to identify factors within the purview of the CMPS that contribute to delay in the military justice system and to make recommendations to the CMPS on what can be done to reduce the delays. While the review itself was completed during the reporting period, the final report is not expected until early in the next reporting period. The report will be discussed in the next Annual Report.

The results of these initiatives will be comprehensively addressed during the next reporting period.

Preparations have also been undertaken during the reporting period for the conduct of a similar external review to consider the DCS organization, structure, human resource management, policies and practices. It is expected that this review will be commenced and completed during the next reporting period.

CHAPTER 7

The Way Ahead: Strategic Initiatives

7.1 INTRODUCTION

As the Superintendent for the administration of military justice in the Canadian Forces (CF), the JAG is responsible for assessing the state of the military justice system on an on-going basis and for developing initiatives, as required, to strengthen and enhance the administration of military justice. To that end, the JAG will be advancing initiatives and undergoing organizational changes in two specific areas during the upcoming reporting period. First, and among the most important initiatives of this reporting period, are those being undertaken to address military justice delay. The initiatives that were undertaken in this regard during the reporting period have already been explored in Chapter 6 of this report. Second, are the continuing efforts to improve data collection and reporting capabilities within the Office of the JAG, which is critical to enable the Office of the JAG to effectively monitor and maintain the functioning of the military justice system. During the reporting period, the conversion work of the summary trial database to a web-based program has progressed and concrete results should be seen during the next reporting period.

7.2 THE MILITARY JUSTICE SYSTEM

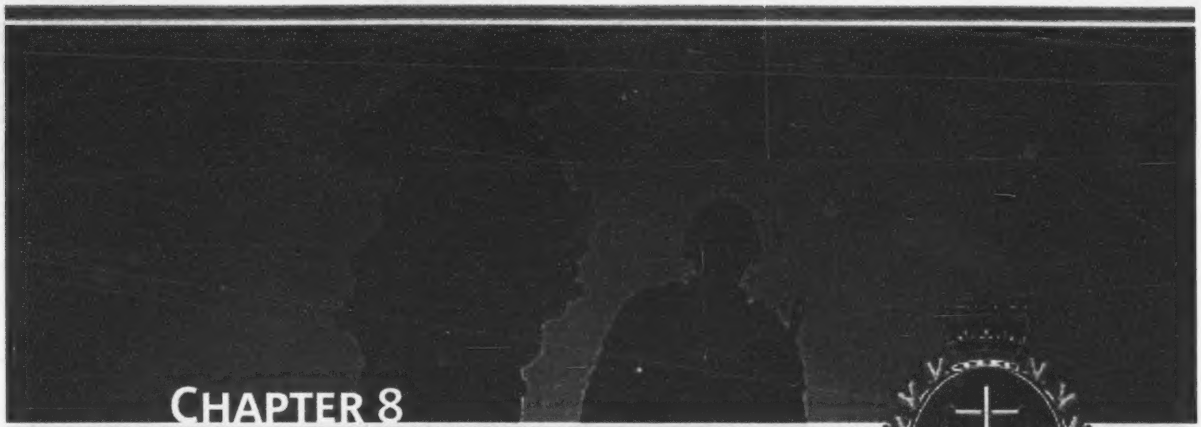
Military Justice Delay

As discussed in Chapter 6, a number of initiatives have been undertaken to combat delay and improve timelines in the military justice system as a whole and especially in relation to matters proceeding to court martial. Over the course of the current reporting period, a number of steps were taken to identify the sources of delay, including the completion of the external review of the Canadian Military Prosecution Service, the preparations for a similar review of Defence Counsel Services and the creation of the working group on military justice delay by the JAG. The development of concrete proposals to enhance the provision of legal advice in the course of disciplinary process and to monitor the progress of individual matters were developed from the internal meeting of representatives from the military justice actors including Deputy Judge Advocate General/Military Justice and Administrative Law, the CMPS and the regional Assistant Judge Advocates General. As noted earlier, these efforts will continue over the next reporting period and it is anticipated that the results from the external reviews and other initiatives will form the basis for a holistic reform approach.

Data Collection Methods

While the Court Martial Reporting System (CMRS) and the summary trial database have been useful tools for monitoring the status of the military justice system, a more flexible tool is required to ensure all the salient information relating to the military justice system is captured and analysed. While these databases have been useful in providing a range of support to users of the military justice system, there are increasingly complex demands for more precise information in different permutations than can be easily accessed under these information systems. To that end, the summary trial database will be undergoing a conversion to a web-based program to enable all JAG users to access the summary trial data and reports commencing in the next reporting period. This new web-based platform will have enhanced search functions, which will allow more sophisticated statistical queries. This conversion is expected to be completed by the spring of 2009.

Furthermore, as discussed in last year's Annual Report, the Comprehensive Information Management Project (CIMP), which is expected to be operational in the 2009 – 2010 timeframe, is being designed. With reference to the JAG's superintendence function, the CIMP will result in one centralized system into which information can be entered which will create a readily available single-source set of statistics. It will also provide a system for managing other matters beyond the statistics, which support the JAG superintendence function, including files related to the JAG's reporting and policy development functions.



CHAPTER 8

Conclusion

The military justice system is one of the means by which the chain of command maintains discipline among the men and women of the Canadian Forces (CF) thereby ensuring an effective and efficient armed force, which is capable and ready to confront the nation's threats. It is acknowledged that Canadians depend upon this vigilance for their safety and well-being.[1] For the military justice system to continue to fulfill this role, it must maintain its strength and effectiveness.

The data and statistics reviewed and analyzed for this reporting period show that the number of summary trials increased notably, however, this increase is attributable in part to increased reporting of summary trials to the Office of the JAG in time for the compilation of reporting period statistics. Additional measures will be undertaken in the next reporting period to ensure the processes and practices for reporting disciplinary information result in the prompt delivery of Records of Disciplinary Proceedings to enable the Office of the JAG to continue to support the chain of command through the monitoring and compiling of statistical information relating to the military justice system.

The number of summary trials for negligent discharges offences increased in absolute terms during the reporting period but remained steady as a proportion of the overall number of summary trials. The majority of the increase in the number of summary trials for the negligent discharge of weapons is attributable to offences committed by privates and officer cadets while undergoing training in non-operational circumstances, particularly at the Canadian Forces Leadership and Recruit School. The chain of command was engaged by the Office of the JAG on the issue of negligent discharges during the course of the reporting period.

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[1] *R. v. Généreux*, [1992] 1 S.C.R. 259.

The number of courts martial increased for the second reporting period, which suggests that the system is functioning effectively. The issue of military justice delay was considered by the military justice delay working group and in the course of the conduct of an external review of the Canadian Military Prosecution Service (CMPS). It was also the subject of an internal meeting between regional and national representatives from the Office of the JAG and a representative from CMPS from which concrete proposals were developed to enhance the provision of legal advice throughout the disciplinary process. It is expected that this will continue to be a focus of activity in the next reporting period through the military justice delay working group, and the conduct of an external review of the Defence Counsel Services. It is further expected that the Office of the JAG will provide advice to the chain of command on measures to address this issue in the next reporting period.

The statistics continue to show that the chain of command avails itself of the summary trial system in a manner that is fair, appropriate and prompt. The Survey of the Summary Trial Process involving CF members who participated in summary trial roles indicates a high level of confidence in the system. In particular, all participants and rank levels express agreement with the view that the system is fair. It discloses that the tenets of the military justice system defined by regulation are being complied with, and that members of the chain of command are very satisfied with the system's ability to respond to their disciplinary needs.

The stand up of the Canadian Forces Military Law Centre (CFMLC) under the Canadian Defence Academy during the reporting period is the culmination of the efforts of many within the Office of the JAG and the wider CF community. The CFMLC was requested to review issues identified in previous surveys relating to military justice including bias, the role of assisting officers and the request for review of summary trial findings process. CFMLC expects to advance initiatives to enhance military justice training and education in the next reporting period. These initiatives include, among other projects, the Presiding Officer Certification Training Transformation and the expected completion of the design of a course for assisting officers. It is anticipated that the CFMLC will continue to play a significant and essential role in supporting the military justice system in collaboration with the Office of the JAG.

The 2007-2008 period was one that saw progress on a number of legislative and regulatory initiatives. Bill C-45[2] was introduced in Parliament and contained extensive amendments to the *National Defence Act*[3] that would enhance the military justice system in response to the 2003 Independent Review conducted by the late Chief Justice Lamer. As well, Bill C-18[4] received Royal Assent and amended the NDA to mirror provisions related to the taking of DNA samples in the *Criminal Code*. Work continued on the drafting of regulations related to mental disorder, sex offender information registration and DNA identification in the context of the military justice system.

This reporting period has also seen notable change within the Office of the JAG. Within the Deputy JAG/Military Justice and Administrative Law division there was a consolidation of directorates to create the Directorate of Law/Compensation, Benefits, Pensions and Estates charged with providing advice in those increasingly complex and demanding areas of law. Furthermore, there continued to be significant numbers of legal officers deployed in support of operations abroad, where they provided advice to commanders in all areas of military law including military justice.

In summary, the reporting period was characterized by a broad use of disciplinary tribunals that reflected a chain of command that is experienced with and confident in the military justice system. Amidst a robust operational and legislative environment, the Office of the JAG, in collaboration with other members of the Department of National Defence and the CF, worked on a myriad of matters to provide training and advice to members of the CF at all ranks whenever and wherever required. Through this work, the Office of the JAG contributed to the accomplishment of CF mission objectives and to the support of the administration of military justice and the rule of law in service of the defence of Canada.

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[2] *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, 2nd Sess., 39th Parl., 2008.

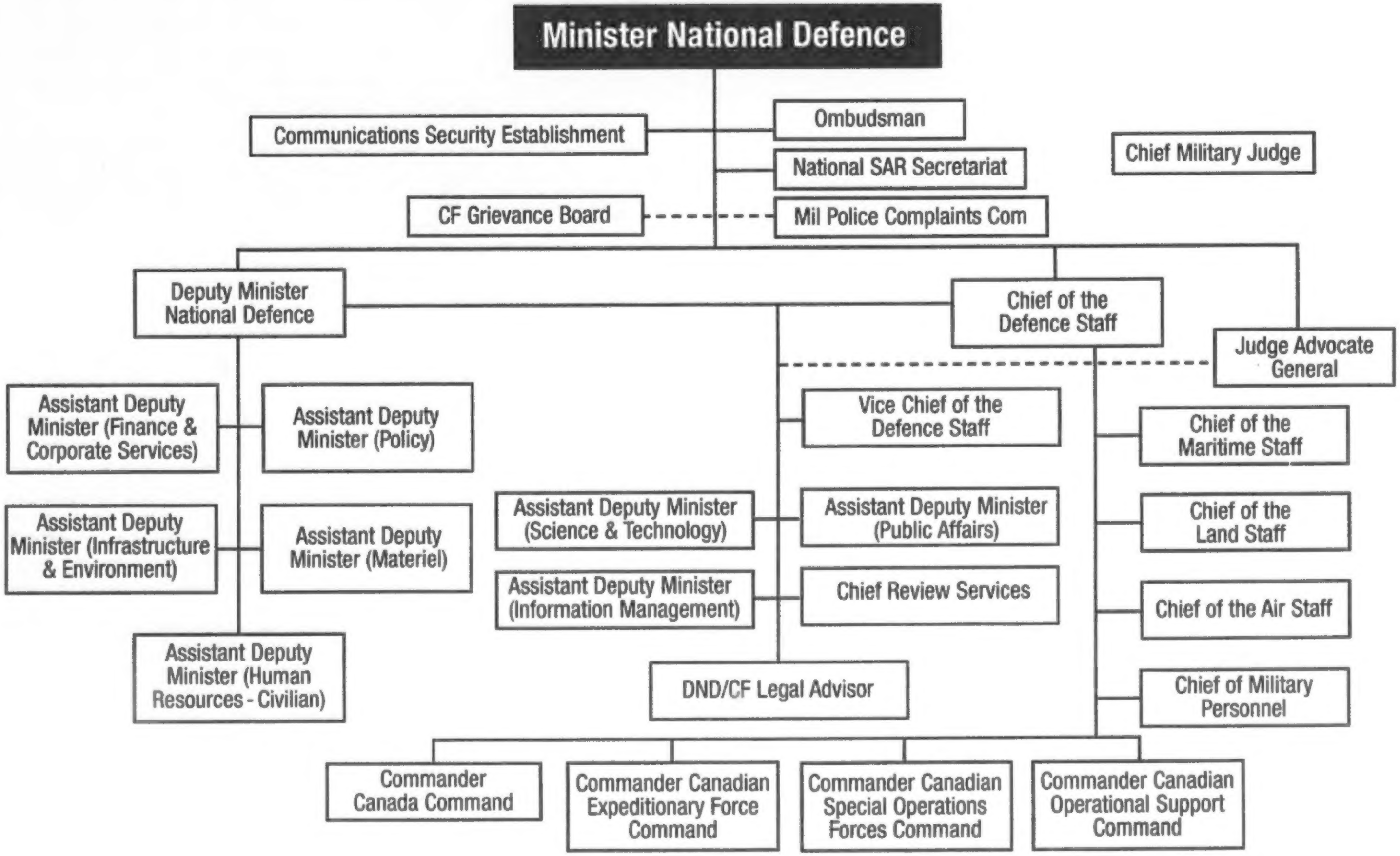
[3] R.S.C. 1985, c. N-5 [NDA].

[4] S.C. 2007, c. 22.

ANNEX A

Contents

ORGANIZATION CHART DISPLAYING THE RELATIONSHIP OF THE JUDGE ADVOCATE GENERAL TO THE MINISTER, THE CHIEF OF THE DEFENCE STAFF AND THE DEPUTY MINISTER


Minister National Defence
Communications Security Establishment
Ombudsman
National SAR Secretariat
Chief Military Judge
CF Grievance Board
Mil Police Complaints Com
Deputy Minister National Defence
Chief of the Defence Staff
Judge Advocate General
Assistant Deputy Minister (Finance & Corporate Services)
Assistant Deputy Minister (Policy)
Vice Chief of the Defence Staff
Chief of the Maritime Staff
Assistant Deputy Minister (Infrastructure & Environment)
Assistant Deputy Minister (Materiel)
Assistant Deputy Minister (Science & Technology)
Assistant Deputy Minister (Public Affairs)
Chief of the Land Staff
Assistant Deputy Minister (Information Management)
Chief Review Services
Chief of the Air Staff
Assistant Deputy Minister (Human Resources - Civilian)
DND/CF Legal Advisor
Chief of Military Personnel
Commander Canada Command
Commander Canadian Expeditionary Force Command
Commander Canadian Special Operations Forces Command
Commander Canadian Operational Support Command

NOTE: CMS, CLS, CAS and CMP are also Commanders of Maritime, Land Force, Air and Military Personnel Commands respectively.

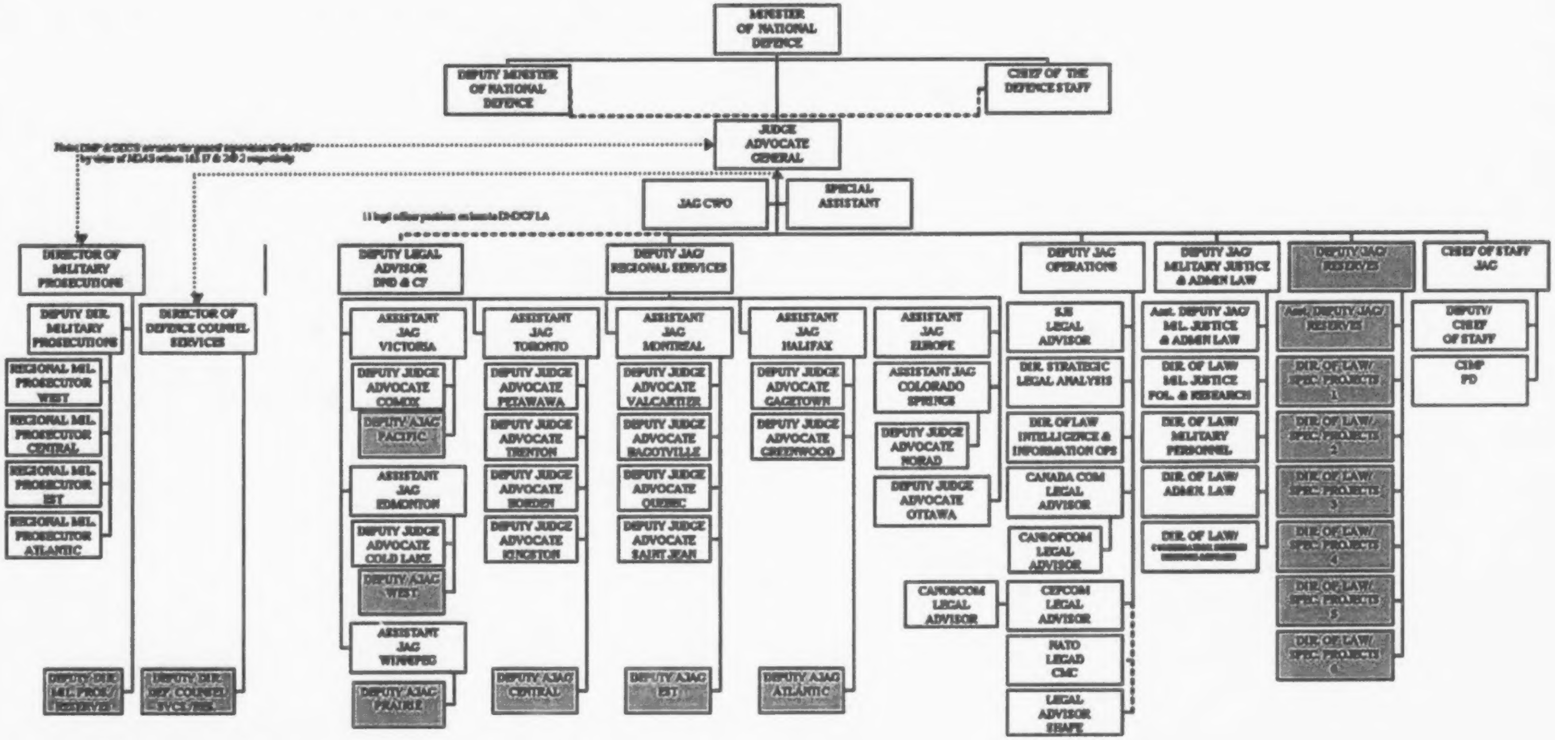
ANNEX B

Contents

ORGANIZATION CHART OF THE OFFICE OF THE JUDGE ADVOCATE GENERAL

MAPS OF JUDGE ADVOCATE GENERAL OFFICES

ORGANIZATION CHART
OFFICE OF THE JUDGE ADVOCATE GENERAL


MINISTER OF NATIONAL DEFENCE
DEPUTY MINISTER OF NATIONAL DEFENCE
CHIEF OF THE DEFENCE STAFF
JUDGE ADVOCATE GENERAL
Note: DMP & DDCS are under the general supervision of the JAG by virtue of NDA sections 165.17 & 249.2 respectively
JAG CWO
SPECIAL ASSISTANT
11 legal officer positions on loan to DND/CF LA
DIRECTOR OF MILITARY PROSECUTIONS
DEPUTY DIR. MILITARY PROSECUTIONS
REGIONAL MIL. PROSECUTOR WEST
REGIONAL MIL. PROSECUTOR CENTRAL
REGIONAL MIL. PROSECUTOR EST
REGIONAL MIL. PROSECUTOR ATLANTIC
DEPUTY DIR. MIL. PROS./ RESERVES
DIRECTOR OF DEFENCE COUNSEL SERVICES
DEPUTY DIR. DEF. COUNSEL SVCS./RES.
DEPUTY LEGAL ADVISOR DND & CF
ASSISTANT JAG VICTORIA
DEPUTY JUDGE ADVOCATE COMOX
DEPUTY AJAG PACIFIC
ASSISTANT JAG EDMONTON
DEPUTY JUDGE ADVOCATE COLD LAKE
DEPUTY AJAG WEST
ASSISTANT JAG WINNIPEG
DEPUTY AJAG PRAIRIE
DEPUTY JAG/ REGIONAL SERVICES
ASSISTANT JAG TORONTO
DEPUTY JUDGE ADVOCATE PETAWAWA
DEPUTY JUDGE ADVOCATE TRENTON
DEPUTY JUDGE ADVOCATE BORDEN
DEPUTY JUDGE ADVOCATE KINGSTON
DEPUTY AJAG CENTRAL
ASSISTANT JAG MONTREAL
DEPUTY JUDGE ADVOCATE VALCARTIER
DEPUTY JUDGE ADVOCATE BAGOTVILLE
DEPUTY JUDGE ADVOCATE QUEBEC
DEPUTY JUDGE ADVOCATE SAINT JEAN
DEPUTY AJAG EST
ASSISTANT JAG HALIFAX
DEPUTY JUDGE ADVOCATE GAGETOWN
DEPUTY JUDGE ADVOCATE GREENWOOD
DEPUTY AJAG ATLANTIC
ASSISTANT JAG EUROPE
ASSISTANT JAG COLORADO SPRINGS
DEPUTY JUDGE ADVOCATE NORAD
DEPUTY JUDGE ADVOCATE OTTAWA
DEPUTY JAG OPERATIONS
SJS LEGAL ADVISOR
DIR. STRATEGIC LEGAL ANALYSIS
DIR. OF LAW INTELLIGENCE & INFORMATION OPS
CANADA COM LEGAL ADVISOR
CANSOFCOM LEGAL ADVISOR
CANOSCOM LEGAL ADVISOR
CEFCOM LEGAL ADVISOR
NATO LEGAD CMC
LEGAL ADVISOR SHAPE
DEPUTY JAG/ MILITARY JUSTICE & ADMIN LAW
Asst. DEPUTY JAG/ MIL. JUSTICE & ADMIN LAW
DIR. OF LAW/ MIL. JUSTICE POL. & RESEARCH
DIR. OF LAW/ MILITARY PERSONNEL
DIR. OF LAW/ ADMIN. LAW
DIR. OF LAW/
DEPUTY JAG/ RESERVES
Asst. DEPUTY JAG/ RESERVES
DIR. OF LAW/ SPEC. PROJECTS 1
DIR. OF LAW/ SPEC. PROJECTS 2
DIR. OF LAW/ SPEC. PROJECTS 3
DIR. OF LAW/ SPEC. PROJECTS 4
DIR. OF LAW/ SPEC. PROJECTS 5
DIR. OF LAW/ SPEC. PROJECTS 6
CHIEF OF STAFF JAG
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CIMP PD

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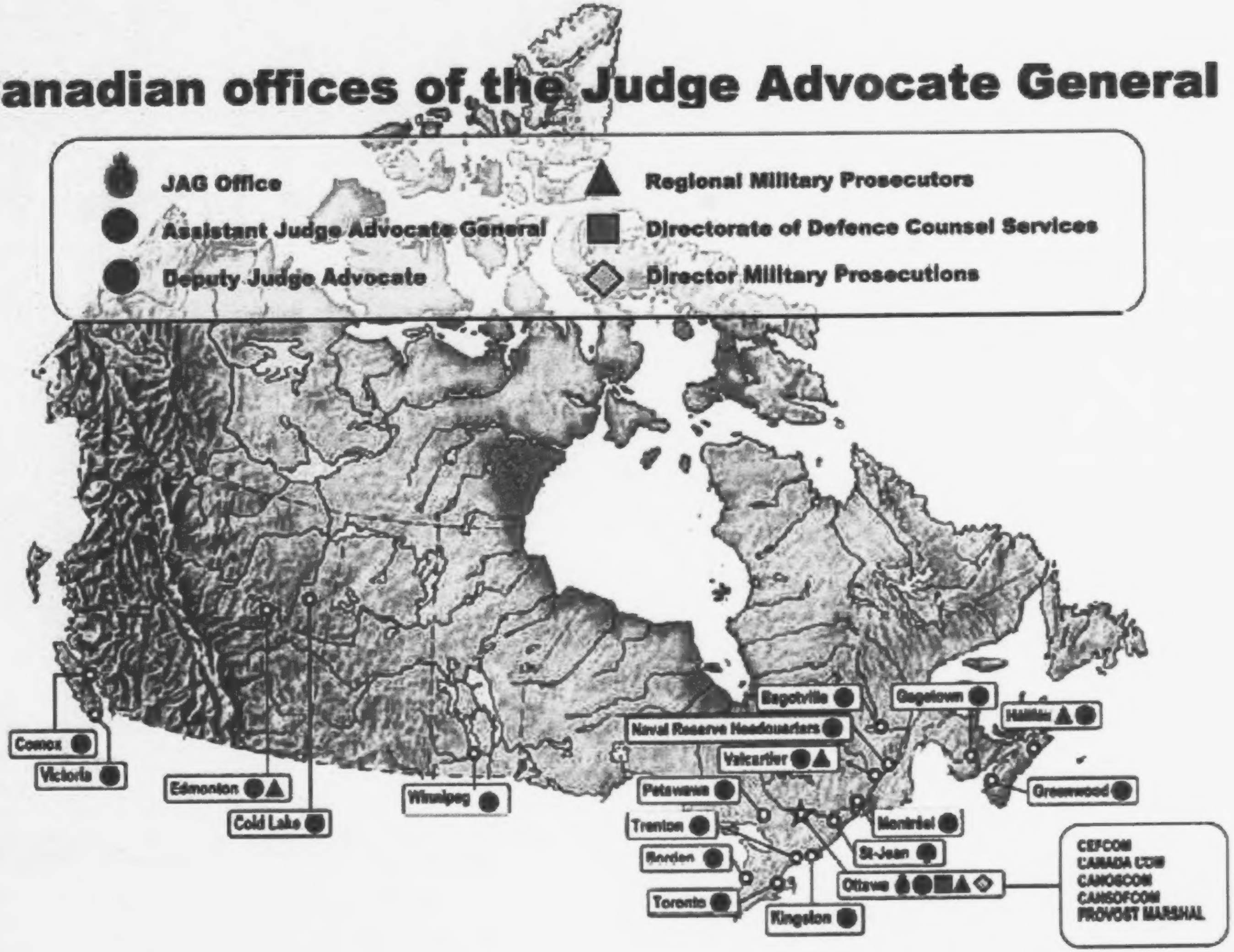
- ● Deputy Judge Advocate
- ▲ Regional Military Prosecutors
- ■ Directorate of Defence Counsel Services
- ◇ Director Military Prosecutions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Petawawa ●
Trenton ●
Borden ●
Toronto ●
Kingston ●
Montréal ●
St-Jean ●
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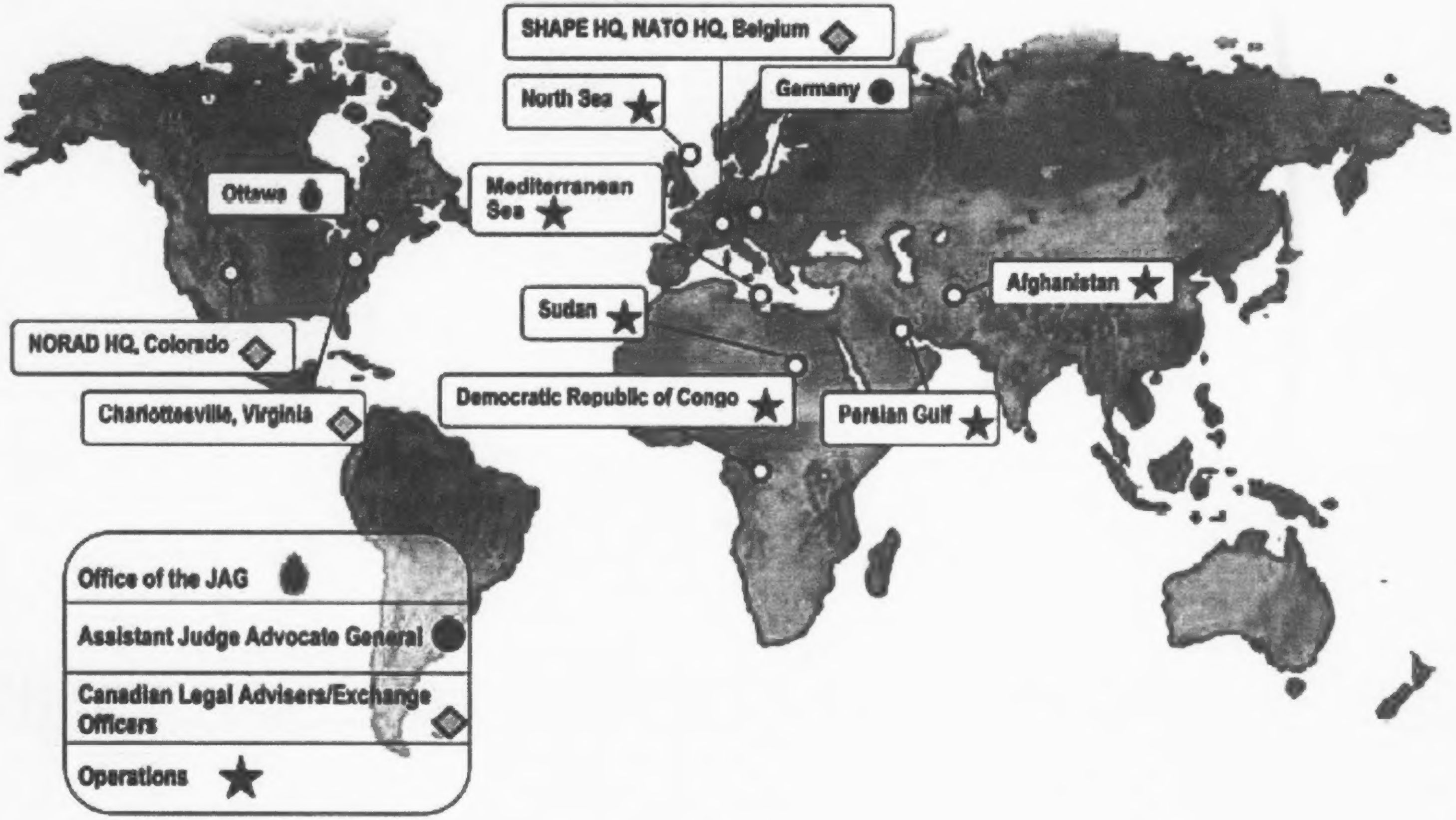
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Democratic Republic of Congo ★
Charlottesville, Virginia ◆
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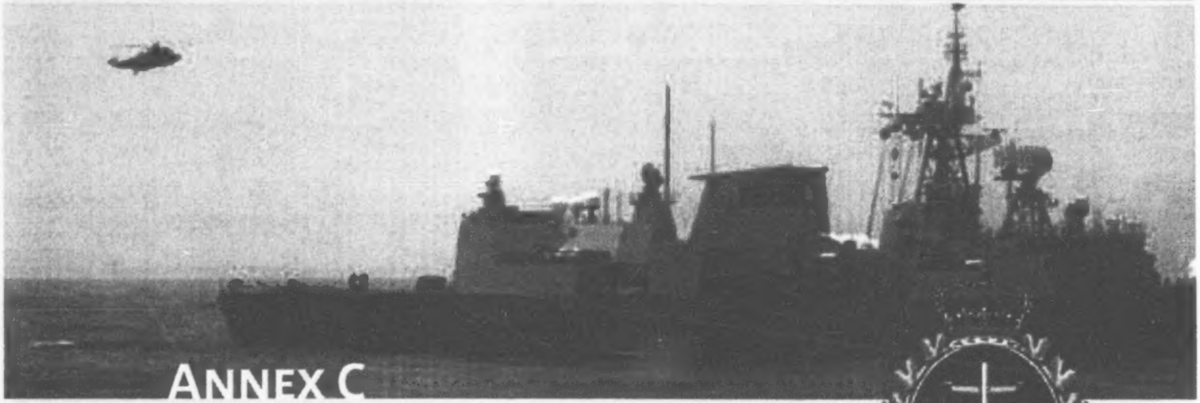
Assistant Judge Advocate General ●
Canadian Legal Advisers/Exchange Officers ◆
Operations ★



ANNEX C

Contents

ANNUAL REPORT OF THE DIRECTOR OF MILITARY PROSECUTIONS

ANNUAL REPORT OF THE DIRECTOR OF MILITARY PROSECUTIONS

Section 1 - Introduction

This report, covering the period of 1 April 2007 to 31 March 2008, is prepared in accordance with the article 110.11 *Queen's Regulations and Orders for the Canadian Forces* (QR&O), which requires that the Director of Military Prosecutions[1] (DMP) report annually to the Judge Advocate General (JAG) on the execution of her duties and functions.[2] As with previous annual reports, this report is organized into sections that will discuss the following:

- The Role of DMP and the Organization and Personnel of the Canadian Military Prosecution Service (CMPS)
- Training and Policy Development
- Military Justice Proceedings During the Reporting Period

Section 2 – The DMP and the CMPS

Role of DMP

The DMP is appointed by the Minister of National Defence. While she acts under the general supervision of the JAG, she exercises her duties and functions independently. Those duties and functions, which are set out in the *National Defence Act*, the QR&O, ministerial orders and other agreements, include:

- Reviewing all Code of Service Discipline charges referred to her by members of the Canadian Forces (CF) chain of command and determining whether:
    - The charges or other charges founded on the evidence should be tried by court martial and, if so, the type of court martial that will try them; or

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[1] The present DMP is Captain (N) M.H. MacDougall, who was appointed to a four year term on 16 January 2005. Her biography can be found at http://hr.ottawa-hull.mil.ca/dsa/app_bio/engraph/FSeniorOfficerBiographyView_e.asp?SectChoice=1&mAction=View&mBiographyID=340.

[2] Previous DMP Annual Reports, along with copies of DMP Policy Directives and other information can be found at the DMP website: http://www.forces.gc.ca/jag/military_justice/cmps/default_e.asp.

  - The charges should be dealt with by an officer who has jurisdiction to try the accused by summary trial.
- Conducting – within Canada or at deployed locations overseas – the prosecution of all charges tried by court martial.
- Acting as appellate counsel for the Minister of National Defence on all appeals from courts martial.
- Acting as the representative of the CF at all custody review hearings conducted before a military judge.
- Acting as the representative of the CF before civilian boards and tribunals whose jurisdiction touches upon matters relevant to the military justice system.
- Providing legal advice to military police personnel assigned to the Canadian Forces National Investigation Service (CFNIS).

Organization of the CMPS

The DMP is assisted in the fulfillment of her duties and functions by the CMPS: a team of regular and reserve force legal officers appointed to act as military prosecutors, civilian paralegals and civilian support staff. The service is organized regionally, and consists of:

- A headquarters at National Defence Headquarters in Ottawa consisting of the DMP, the Deputy Director (DDMP), an appellate counsel and two staff prosecutors responsible for communications, training and policy development;[3]
- Regional Military Prosecutors' (RMP) offices, each established for two regular force prosecutors, located at:
  - Halifax, Nova Scotia (Atlantic Region)
  - Valcartier, Quebec (Eastern Region)
  - Ottawa, Ontario (Central Region)
  - Edmonton, Alberta (Western Region)
- Reserve force prosecutors located individually across Canada.[4]

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[3] During the reporting period the legal officer posted to the second of these positions performed duties as a regional military prosecutor.

[4] An organization chart can be found at http://www.forces.gc.ca/jag/military_justice/cmps/org_chart/CMPSOrgChart_e.pdf.

Given the geographic dispersal of the CMPS across Canada, effective communication is vitally important to its operations. To ensure that prosecutors remain aware of the progress of individual disciplinary files, DMP updates and distributes several different internal reports on a weekly basis. The DMP also convenes regular conference calls among the regular force prosecutors to provide direction and discuss matters of common interest. Upon the completion of each court martial the trial prosecutor informs all other military prosecutors of the results of the case and the reasons provided by the military judge. The DMP and DDMP maintain continuous individual contact with all military prosecutors and key civilian staff.

CMPS Personnel

CMPS headquarters experienced a series of personnel challenges during the reporting period. In May, the legal officer occupying the appellate counsel position deployed to Afghanistan. The appellate counsel position remained empty until August, when a new legal officer took up the post. The staff prosecutor position was left empty upon the posting of the previous incumbent in July. It remains unfilled as a result of higher manning priorities within the Office of the JAG. On the civilian side, both paralegal positions were unfilled for significant portions of the reporting period but were occupied at the end of it.

The present reporting period also offered significant personnel challenges for the RMP offices. One of the military prosecutors assigned to the Atlantic Region deployed to Afghanistan in November and another assigned to the Western Region vacated her position in the middle of March after transferring to the Reserve Force. Both positions will remain vacant until the next posting season. As well, a prosecutor from the Reserve Force resigned from the CMPS in February after being appointed to a judicial position in a civilian jurisdiction. Temporary replacements had to be found to replace RMP Atlantic and RMP Western legal assistants who were absent for considerable periods of time.

Section 3 – Training and Policy Development

All regular force military prosecutors are military legal officers who are posted to their positions for a limited period of time – usually three to five years. As such, the training that they receive must support both their current employment as prosecutors as well as their professional development as officers and military lawyers. The relative brevity of a military prosecutor's tour with CMPS requires a significant and ongoing organizational commitment to providing him or her with the formal training and practical experience necessary to develop the skills, knowledge and judgment essential in an effective prosecutor.

Given the small size of the DMP organization, much of the required training is provided by organizations external to the CF. During the present reporting period, DMP prosecutors participated in conferences and continuing legal education programs organized by the Federation of Law Societies of Canada, the Canadian Bar Association and its provincial affiliates, the Alberta Department of Justice, the Ontario Crown Attorneys Association and various provincial law societies. These programs benefited the CF not only through the knowledge imparted or skills developed but also through the professional bonds forged by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

The capstone to DMP's training efforts is an annual workshop of military prosecutors. This year's workshop took place on 22 and 23 October 2007 at Ottawa, Ontario. It was attended by regular and reserve force prosecutors and by the civilian paralegal staff. The focus of the workshop was on current issues of particular relevance to prosecutors with most sessions being devoted to interactive "round-table" discussions chaired by DMP or DDMP. Additional presentations were provided by the leadership of the CFNIS and by a senior Ontario Crown Attorney. The workshop was a success, providing an excellent forum for professional interaction among military prosecutors from across the country.

All military lawyers and military officers are required to undertake professional development activities consistent with their level of proficiency and experience. During the reporting period, all available military prosecutors attended the annual JAG continuing legal education workshop. Individual military prosecutors also took part in a variety of professional development activities ranging from the legal officer intermediate training program to the officer professional military education program to continuing second language training. Finally, in order to maintain their readiness to deploy in support of DMP's mandate, military prosecutors conducted individual military skills training such as weapons familiarization and first aid training.

DMP also provides support to the training mandates of other CF entities. During the present reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the Office of the JAG, who completed a portion of their "on the job training" program by assisting in the prosecution of charges at courts martial. Military prosecutors also provided presentations on legal matters to students at the Canadian Forces Military Police Academy and to investigators at regional detachments of the CFNIS. In February, the DDMP and the appellate prosecutor acted as instructors during a weeklong Legal Officer Intermediate Training course in military justice.

A hardworking and highly motivated civilian support staff is an integral part of the DMP team and provides a most important service in the carrying out of the prosecutorial function. As a result, significant efforts are also made to provide these individuals with training and experiences that will enhance their value to DMP and to DND.

In order to ensure that military prosecutors carry out their duties in a manner that consistently reflects her intent and to provide members of the CF and the Canadian public with confidence in the manner in which she is carrying out her statutory duties, DMP has published a series of policy directives. The majority of these directives have not been significantly updated since their initial promulgation shortly after the formation of the CMPS in September 1999. However, DMP Policy Directive 003/00, *Prosecutorial Discretion and Post-Charge Screening*, was amended to delegate more authority to RMPs. While recognizing the need to conduct a fulsome review and revision of the policies, the previously-described challenges in filling the staff prosecutor position have precluded such an effort during the present reporting period.

As indicated in her last annual report, the present reporting period saw DMP undertake a formal review of the processes by which the

CMPS deals with charges referred to DMP, with a view to reducing the delay encountered by accused CF members in having the charges against them heard and decided by a court martial. Two civilian consultants – both with extensive experience as prosecutors and managers – were contracted to provide DMP with a review of CMPS in order to identify those factors within CMPS's purview that contribute to delay and to make recommendations about how to reduce those delays. Among the major findings of the report were the conclusions that the delays in the court martial system were system wide and are so severe that the very purpose of having a separate military justice system is threatened. The consultants provided DMP with 71 recommendations covering the whole spectrum from the investigation stage until the final disposition of the case at court martial. DMP will consider the recommendations with a view to implementing them through the policy review and revision process.

Military prosecutors also play a role in the development of Canadian military justice and criminal justice policy. The DMP continues to play a strong role in such efforts through her participation on a committee made up of the heads of all federal, provincial and territorial prosecution services. Other military prosecutors act as her representatives on various sub-committees formed under the auspices of the main committee.

Section 4 - Military Justice Proceedings

The nature of the operational tasks entrusted to the CF requires the creation and maintenance of a high degree of discipline among CF members. Parliament and the courts have long recognized the importance of a separate Code of Service Discipline to govern the conduct of individual soldiers, sailors and air force personnel and prescribes punishment for disciplinary breaches. The Code of Service Discipline also creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are the courts martial.

During the present reporting period, military prosecutors represented the interest of the CF in a number of different types of judicial proceedings related to the military justice system. These proceedings included courts martial, appeals from courts martial, reviews of pre-trial custody and a mental health review board.

Courts Martial

During the present reporting period, the DMP received 110 applications for disposal of a charge or charges from various referral authorities. This number is roughly consistent with the numbers of applications received annually since the appointment of the first DMP on 1 September 1999 (see figures 1 and 2).

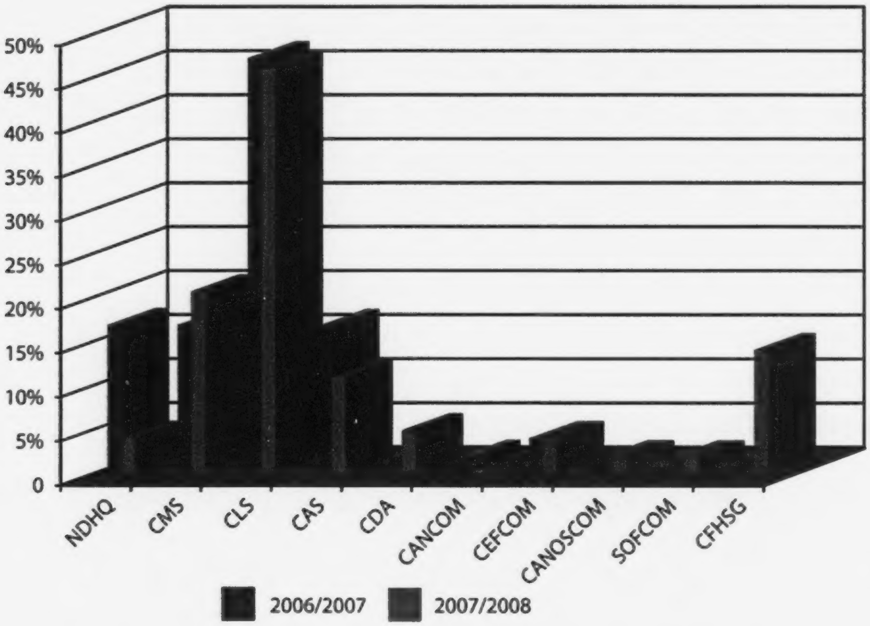

Figure 1: Referrals by Command of Referral Authority (2006-2008)

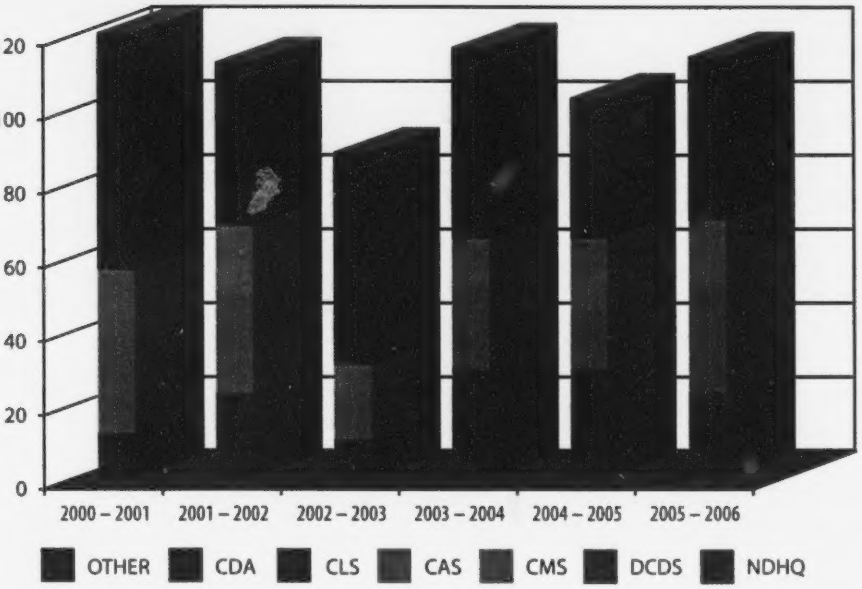

Figure 2: Referrals by Command of Referral Authority (2000-2006)

Following review by individual military prosecutors, charges were preferred to court martial in respect of 78 applications. In two of these cases, the accused person, having previously elected to be tried by court martial, changed their election prior to the commencement of trial, choosing instead to be tried summarily by a presiding officer. In one case, DMP decided to withdraw all the preferred charges before the trial. A decision to not prefer any charges either because the admissible evidence was not sufficient to provide a reasonable prospect of conviction or because of a determination that the public interest did not require the prosecution of charges at court martial was made in respect of 16 applications.

During the present reporting period, a total of 288 charges[5] were tried before 78 courts martial. The number of courts martial completed is the highest since the formation of the CMPS in 1999 (see figure 3).

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[5] This figure includes 20 charges that were withdrawn either before or after the court martial commenced.

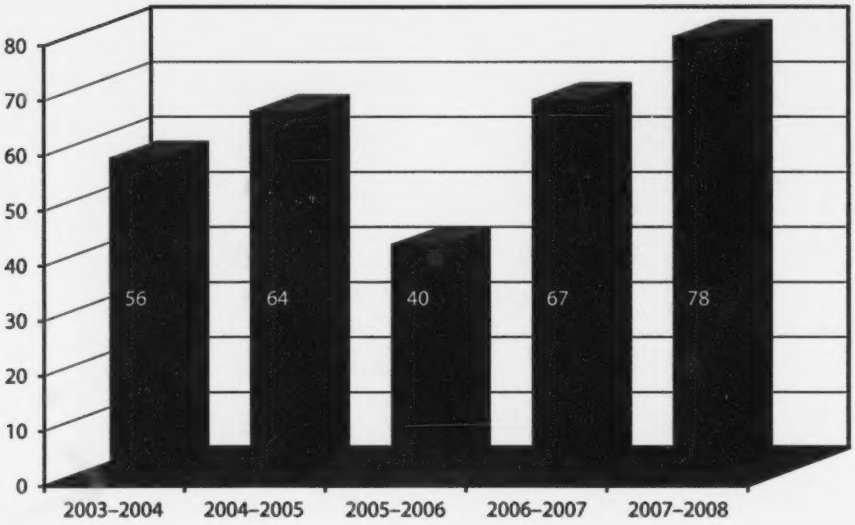

Figure 3: Number of Courts Martial Completed (Historical)

Despite the number of courts martial completed during the reporting period, the backlog of cases awaiting trial remains significant. As of 31 March 2008, 10 courts martial had been commenced but not completed, 18 had been convened but not yet commenced and a further 24 charge sheets had been preferred to the Court Martial Administrator and were awaiting the assignment of a military judge and the convening of a court martial. This total of 52 matters awaiting completion compares to a backlog of 60 on 31 March 2007. The backlog of cases awaiting trial continues to be a significant factor contributing to the post-charges delays encountered by accused CF members.

During the present reporting period, 62 trials were held before a Standing Court Martial, composed of a military judge sitting alone as both trier of fact and trier of law. Sixteen were held before a Disciplinary Court Martial, composed of three CF members as triers of fact and a military judge as trier of law. There were no trials before a General or Special General Court Martial (see figure 4).

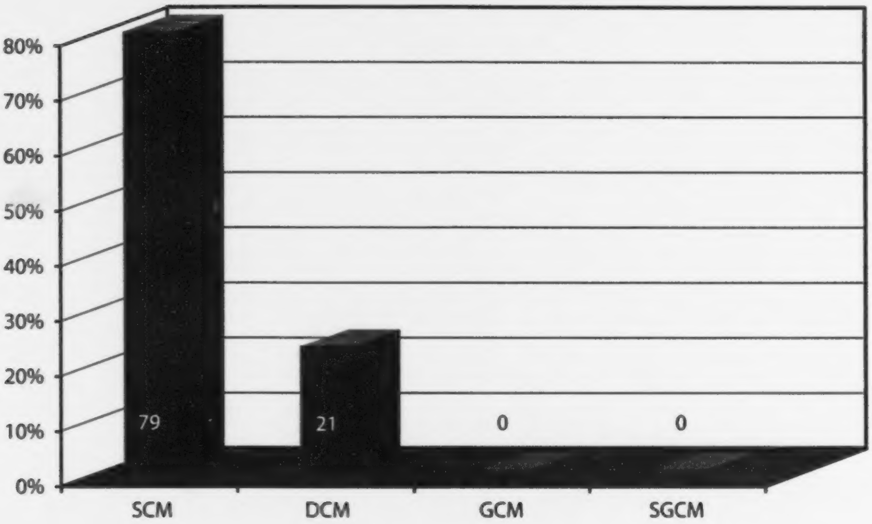

Figure 4: Type of Court Martial Trying Accused

At the conclusion of 62 of the trials, the trier of fact made a finding of guilty in respect of at least one charge (see figure 5).

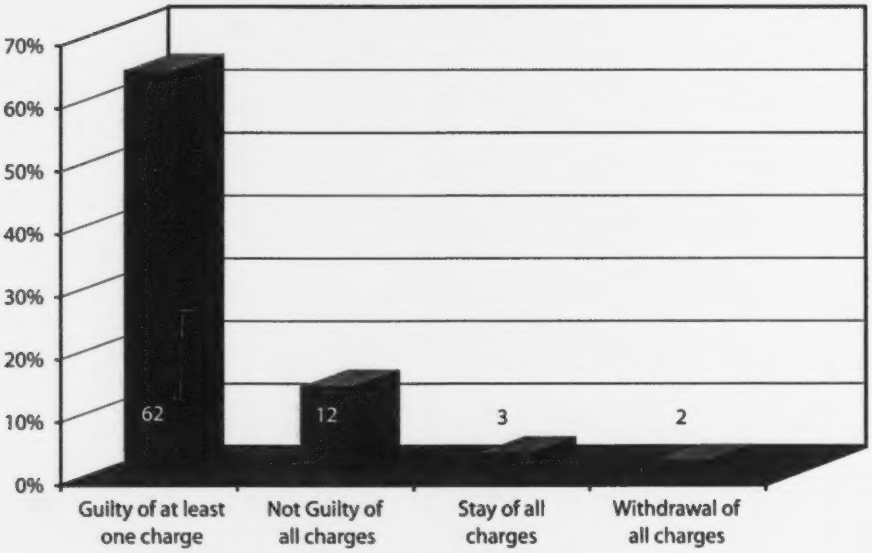

Figure 5: Court Martial Disposition[6]

Annexes A and B provide additional information regarding the charges tried and the results of each court martial.

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[6] Two accused were tried in a joint trial; therefore two findings were made at one court martial.

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 62 sentences pronounced by courts martial during the reporting period involved 99 punishments (see figure 6). A fine was the most common punishment, with 44 fines being imposed. Of note, ten punishments of imprisonment and seven punishments of detention were imposed by the court. A suspended sentence, where the accused is not actually required to be incarcerated, was imposed in three of the 17 cases. Military judges heard two applications for release pending appeal in the remaining cases where a custodial sentence was imposed. Release pending appeal was granted in respect of both of the applications.

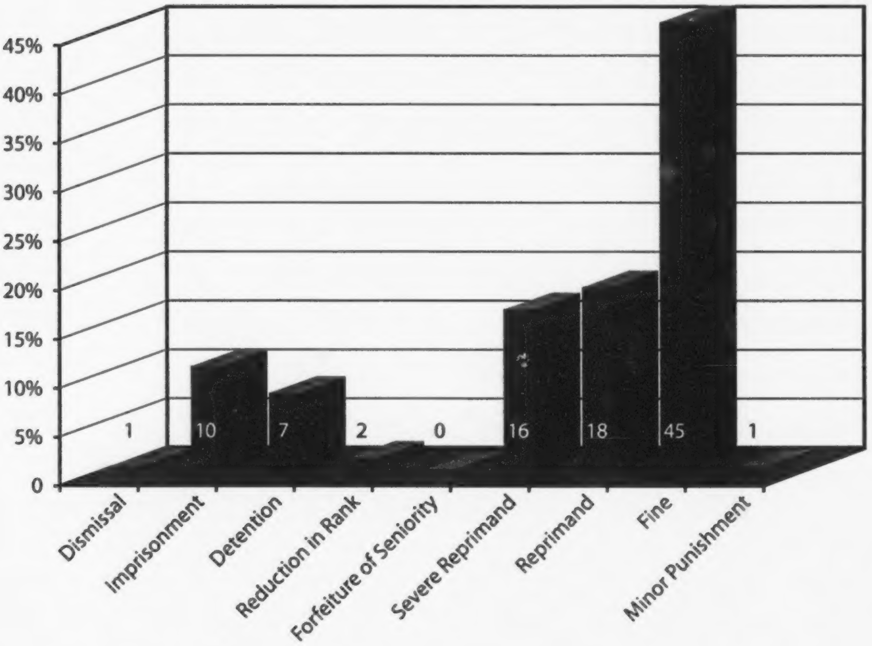

Figure 6: Punishments Awarded

Appeals

At the beginning of the reporting period eight appeals were ongoing, all of them initiated by convicted members. Ten appeals were initiated during the reporting period, one of them by Her Majesty. Of these 18 cases in the appeal process, four were dismissed for failure by the appellants to file their factum and one was abandoned by an appellant. The Court Martial Appeal Court (CMAC) held oral hearings in respect of four appeals and rendered a decision in three of them. Two of these decisions are worthy of particular comment and are discussed below. While we are waiting for one decision, the remaining nine appeals have not yet been disposed of.

Annex C provides additional information regarding the types of appeal and the progress of each appeal.

Corporal R.D. Grant v. R.[7]

The Appellant was convicted of assault causing bodily harm. He was sentenced to 30 days of detention suspended and ordered to provide a DNA sample. He appealed the legality of his conviction. The CMAC allowed the appeal, set aside the finding of guilty and ordered that the Appellant's DNA sample be destroyed. The CMAC remitted the matter to a commanding officer for a summary trial.[8] The Court declared that the Appellant, having requested to be tried summarily, shall be deemed to have renounced the benefit of the limitation period stated in paragraph 69(b) of the NDA.[9] The Court granted the Appellant the remedy set out above, which it described as tailored to the specific facts and circumstances of the case.[10]

The CMAC decided that the fairness of the trial and the Appellant's right to make full answer and defence had not been compromised by the delay in completing the investigation and laying the charge against him. The Court noted also that an accused does not have a vested right to a summary trial.[11] However, relying upon statistics, the Court held that proceeding summarily is usually the practice. It concluded that it was not unreasonable to infer that the Appellant had a legitimate expectation that he would be tried summarily and that he was unjustly deprived of the benefit of the summary trial procedure in reason of the delay in completing the investigation and laying the charge. In arriving at this conclusion, the Court considered section 162 of the NDA, which provides that "charges under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit."

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[7] *R. v. Grant*, [2007] CMAC-493.

[8] *Ibid.* at para. 60.

[9] *Ibid.* at para. 60. NDA s. 69(b): "the person may not be tried by summary trial unless the trial begins before the expiry of one year after the day on which the service offence is alleged to have been committed".

[10] *Ibid.* at para. 58.

[11] *Ibid.* at para. 32.

An application for leave to appeal was made by Her Majesty at the Supreme Court of Canada, in *R. v. Grant*, however it was denied.

Ex-Private C. Taylor v. R.[12]

Private Taylor had pleaded guilty to one charge of possession of marijuana and one charge of trafficking in cocaine. Counsel had jointly recommended a sentence of 40 days detention and a fine of $1,000. The Military Judge, considering the interest of the Canadian Forces in strongly denouncing the trafficking of serious drugs such as cocaine, decided to depart from the joint submission and sentenced the accused to 40 days imprisonment and a fine of $1,000.

On appeal, the Appellant submitted that the Military Judge erred in rejecting a reasonable joint submission on sentence. He also submitted that the Military Judge denied him procedural fairness by not informing counsel that he was considering rejecting their joint submission on sentence and giving them the opportunity to make further submissions.

The CMAC dismissed the appeal. The Court concluded that the Military Judge erred by failing to inform counsel that he was considering departing from the joint submission and to provide them an opportunity to justify the proposal. However, the Court considered that the error was without consequences, since no further information could have been provided to the Military Judge. The Court held that the sentence under appeal was not demonstrably unfit and adopted the statement made by the Military Judge that use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our forces and to our personnel and equipment.

Other Hearings

DMP v. CMJ and CMA[13]

In the previous reporting period, counsel for the DMP had filed a Notice of Appeal in the Federal Court of Appeal (FCA) to set aside a decision of the Federal Court of Canada (FCC) refusing to grant writs of *mandamus* to compel the CMJ to assign a military judge and the CMA to convene a court martial. The DMP had applied to the FCC for judicial review of a decision of the CMJ refusing to assign a military judge to preside over the matter on the basis that accepting the Charge Sheet classified "Secret" by the DMP would be inconsistent with the principle of openness in the military justice system. As a result, the CMA refused to convene a court martial.

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[12] *R. v. Taylor*, [2007] CMAC-497.

[13] *Canada (Director of Military Prosecutions) v. Canada (Court Martial Administrator)*, 2007 FCA 390.

On 10 December 2007, the Federal Court of Appeal allowed the appeal and ordered the CMJ to assign a military judge to preside at the Standing Court Martial of the accused and ordered the CMA to convene a Standing Court Martial forthwith. The Court concluded that allowing the charge to be sealed by the DMP for the brief period required to allow a military judge to assess the issue of confidentiality does not offend the open court principle.[14]

Custody Reviews

Military judges are required to review orders made to retain a CF member in service custody. DMP is mandated to represent the interest of the Canadian Forces at such hearings. During the present reporting period, military prosecutors appeared at 2 pre-trial custody review hearings. In 1 case the person in custody was released upon giving an undertaking to comply with certain conditions set by the military judge, while in the other case the person remained in custody until his trial.

Mental Health Review Board

Also during the present reporting period, a military prosecutor represented the Canadian Forces at a provincial mental health review board hearing involving Ex-Master-Corporal Matchee, a former member declared unfit to stand trial in 1994. During this hearing, the Saskatchewan Review Board was requested by counsel for Mr. Matchee to determine whether a recommendation for a stay of proceedings should be made to the Standing Court Martial. The Saskatchewan Review Board is assessing if Mr. Matchee is at risk of causing significant harm if the Board does not retain jurisdiction on him. The hearing was adjourned for consideration.

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[14] *Ibid.* at para. 50.

Conclusion – DMP Comments

Unfortunately, the most significant strategic concern I identified in last year's annual report remains a challenge. Timeliness of the court martial process continues to beleaguer the military justice system. Once again, overall timelines have not decreased in this reporting period. This is not a criticism of the people working in the system. They are dedicated; hardworking individuals who continually strive to improve the system. The issue of timeliness is also not unique to the court martial system. It also remains a significant challenge in civilian jurisdictions.

Nevertheless, it is clear that we cannot accept this "momentum of inertia" that erodes commander's confidence in and the credibility of the military justice system. No less than a "sea change" in the ways in which all participants have traditionally carried out their respective functions is necessary to reverse this momentum.

The identification phase of CMPS's plan to initiate this "sea change" was completed in this reporting period. Two very experienced former Crown Attorney's for the city of Ottawa were hired as consultants to conduct a review of the CMPS in order to identify those factors within its' purview that contribute to delay in the military justice system and to make recommendations about what the service could do to reduce those delays. The draft of this report was completed on 31 March 2008. Review of the report and implementation of recommendations will be conducted over the forthcoming months.

Concurrent with this initiative were internal CMPS discussions on how to improve our policies and practices so as to reduce delay. Closer monitoring of post charge review timelines proved to be of little, if any, benefit. Devolution of more independent authority to RMPs was also considered as a possible way of reducing delay and reflecting the growing maturity of CMPS as an organization. The concept was universally embraced at the annual DMP workshop in October, and the CMPS policy manual was amended in March to reflect RMP's increased authority. It is still too early to evaluate the impact of this new approach on delay but it has had an obvious impact on morale in the organization.

ANNEX C – ANNEX A

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
1.	SCM	Maj Brause	s. 116 NDA	Loss or Damage of Public Property	Stay	N/A	N/A		Ste Catherines, ON Hamilton, ON	CLS	English
			s. 117(f) NDA	An Act of a Fraudulent Nature	Stay						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Stay						
			s. 83 NDA	Disobedience of a Lawful Command	Stay						
2.	SCM	CPO2 Bouvet	s. 130 NDA (s. 267(a) Cr. C.)	Assault with a Weapon	Not guilty	N/A	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
3.	SCM	EX-2LT Barnaby	s. 129 NDA	Conduct to the Prejudice	Stay	Reprimand and $400 fine.	N/A	Esquimalt, BC	Victoria, BC	CAS	English
			s. 129 NDA	Conduct to the Prejudice	Guilty						
4.	DCM	MCpl Billard	s. 74(c) NDA	Failed to Use the Utmost Exertion	Withdrawn	21 days detention	N/A	Gatineau, QC	Kandahar, Afghanistan	CEFCOM	English
			s. 129 NDA	Neglect to the Prejudice	Guilty						
5.	SCM	Pte Courcy	s. 130 NDA (s. 266 Cr. C.)	Assault	Withdrawn	$400 fine	N/A	Valcartier, QC	Borden, ON	CLS	French
			s. 129 NDA	Conduct to the Prejudice	Guilty						
6.	SCM	Sgt Craig	s. 83 NDA	Disobedience of a Lawful Command	Not Guilty	N/A	N/A	Greenwood, NS	Greenwood, NS	CAS	English
7.	SCM	Cpl Davidson	s. 130 NDA (s. 271 Cr. C.)	Sexual Assault	Not Guilty	N/A	N/A	Borden, ON	Borden, ON	CFHSG	English
			s. 97 NDA	Drunkenness	Not Guilty						
8.	DCM	Capt Hall	s. 97 NDA	Drunkenness	Guilty	$900 fine	N/A	Esquimalt, BC	Victoria, BC	CAS	English
			s. 84 NDA	Striking a Superior Officer	Withdrawn						
			s. 130 NDA (s. 266 Cr. C.)	Assault	Withdrawn						
9.	SCM	Ex-WO Laity	s. 83 NDA	Disobedience of a Lawful Command	SCM is without jurisdiction	N/A	N/A	Shilo, MB	Shilo, MB	CLS	English
			s. 83 NDA	Disobedience of a Lawful Command	SCM is without jurisdiction						
10.	SCM	Pte Lee	s. 97 NDA	Drunkenness	Guilty	$1,000 fine	N/A	Gatineau, QC	Shilo, MB	CLS	English

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
11.	SCM	LCdr McNally	s. 125(a) NDA	False Entries in a Document	Guilty	Severe reprimand and $3,000 fine	N/A	Gatineau, QC	South West Asia North Bay, ON	CFHSG	English
			s. 125(a) NDA	False Entries in a Document	Not Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Not Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
12.	SCM	Ex Cpl Prince	s. 130 NDA (s. 4(1) CDSA	Possession	Guilty	Severe reprimand and $2,500 fine	N/A	Trenton, ON	Trenton, ON	SOFCOM	English
			s. 130 NDA (s. 4(1) CDSA	Possession	Guilty						
			s. 130 NDA (s. 4(1) CDSA	Possession	Guilty						
13.	SCM	Capt Rafuse	s. 129 NDA	An Act to the Prejudice	Not Guilty	N/A	N/A	Winnipeg, MB	Dubai, UAE	CEFCOM	English
14.	DCM	LS Rogers	s. 114 NDA	Stealing	Guilty	30 days detention	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 116(a) NDA	Damage of Public Property	Guilty						
15.	SCM	Maj Sweet	s. 130 NDA (s. 266 Cr. C.)	Assault	Withdrawn	Severe reprimand and $4,000 fine	N/A	Borden, ON	Borden, ON	CFHSG	English
			s. 95 NDA	Ill-Treatment of a Subordinate	Guilty						
			s. 97 NDA	Drunkenness	Guilty						
16.	DCM	EX-OS Secord	s. 130 NDA (s. 271 Cr. C.)	Sexual Assault	Guilty	Severe reprimand and $1,000 fine.	DNA Order	Halifax, NS	St. John's, NFLD	CMS	English
17.	DCM	EX-OS Stewart	s. 125 NDA	False Entries in a Document	Guilty	Reprimand and $3,000 fine	N/A	Halifax, NS	Halifax, NS Truro, NS	CMS	English
			s. 90 NDA	Absent Without Leave	Stay						
			s. 125 NDA	False Entries in a Document	Guilty						
			s. 90 NDA	Absent Without Leave	Stay						
			s. 125 NDA	False Entries in a Document	Guilty						
			s. 130 NDA (s. 367 Cr. C.)	Forgery	Guilty						
			s. 130 NDA (s. 368 Cr. C.)	Uttering a Forged Document	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
18.	SCM	Capt (Ret'd) Taylor	s. 130 NDA (s. 368(1) Cr. C.)	Uttering a Forged Document	Stay	Reprimand and $1,500 fine (reduced to $1,000 for delay)	N/A	Toronto, ON	Toronto, ON Aurora, ON Oshawa, ON Whitby, ON Willowdae, ON Banff, AB	CLS	English
			s. 117 (f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
19.	DCM	Cpl Wells	s. 130 NDA (s. 270 Cr. C.)	Assaulting a Peace Officer	Guilty	7 days detention (suspended) $2,000 fine	N/A	Borden, ON	Borden, ON	CFHSG	English
			s. 97 NDA	Drunkenness	Guilty						
20.	SCM	Cpl Russell	s. 114 NDA	Stealing	Guilty	Reprimand and $800 fine	N/A	Edmonton, AB	Wainwright, AB	CLS	English
21.	SCM	Cpl Hutchison	s. 114 NDA	Stealing	Guilty	Reprimand and $400 fine	N/A	Edmonton, AB	Wainwright, AB	CLS	English

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
22.	SCM	Sgt Couture	s. 84 NDA	Striking a Superior Officer	Stayed	N/A	N/A	Valcartier, QC	Valcartier, QC	CLS	French
			s. 85 NDA	Used threatening Language to a Superior	Stayed						
			s. 129 NDA	Conduct to the Prejudice	Stayed						
			s. 129 NDA	Conduct to the Prejudice	Stayed						
			s. 129 NDA	Conduct to the Prejudice	Stayed						
23.	SCM	Ex-Cpl Beek	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Not Guilty	9 months imprisonment	N/A	Edmonton, AB	Edmonton, AB	CLS	English
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Not Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Not Guilty						
24.	SCM	Ex-LS Ennis	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Not Guilty	Reprimand and $2000 fine	N/A	Esquimalt, BC	Vancouver, BC	CMS	English
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Withdrawn						
			s. 129 NDA	An Act to the Prejudice	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
25.	SCM	AB Fenwick-Wilson	s. 129 NDA	An Act to the Prejudice	Guilty	$200 fine	N/A	Esquimalt, BC	Penticton, BC	CMS	English
26.	SCM	Gnr Forrest	s. 129 NDA	An Act to the Prejudice	Not Guilty	N/A	N/A	Petawawa, ON	Petawawa, ON	CLS	English
27.	SCM	PO1 Libby	s. 130 NDA (s. 140 Cr. Code)	Public Mischief	Guilty	Severe reprimand and $2500 fine	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 129 NDA	An Act to the Prejudice	Stay						
			s. 114 NDA	Stealing	Guilty						
			s. 114 NDA	Stealing	Guilty						
28.	DCM	Ex-Cpl Rioux	s. 130 NDA (s. 266 Cr. Code)	Assault	Stay	N/A	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 84 NDA	Offering Violence to a Superior Officer	Stay						
29.	DCM	Ex-Cpl Real	s. 111(1)(c) NDA	Improper Driving of Vehicles	Withdrawn	$700 fine	N/A	Valcartier, QC	Ottawa, ON	CLS	English
			s. 112(a) NDA	Unauthorized Use of a CF Vehicle	Guilty						
			s. 83 NDA	Disobeyed a Lawful Command	Withdrawn						
30.	DCM	Sgt Underhill	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Stayed	Reprimand and $2000 fine	N/A	Meaford, ON	Angus, ON	CLS	English
			s. 95 NDA	Ill-treatment of Subordinates	Guilty						
			s. 93 NDA	Behaved in a Disgraceful Manner	Guilty						
			s. 93 NDA	Behaved in a Disgraceful Manner	Guilty						
31.	SCM	OS Harmati	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Guilty	Severe reprimand & $1000 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
32.	SCM	Cpl Gibbons	s. 114 NDA	Stealing	Guilty	Reduction in rank	N/A	Regina, SK	Regina, SK	CLS	English
			s. 97 NDA	Drunkenness	Not guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
33.	SCM	Pte Hogan	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty	60 days imprisonment	N/A	Fredericton, NB	Oromocto, NB	CLS	English
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Withdrawn						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
34.	SCM	Cpl Khadr	s. 85 NDA	Behaved with Contempt Toward a Superior Officer	Guilty	Reprimand, $500 fine and 14 days confinement to barracks	N/A	Petawawa, ON	Petawawa, ON	CLS	English
			s. 118(2)(e) NDA	Caused a Disturbance at ST)	Not Guilty						
35.	SCM	Cpl McCallum	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Not Guilty	N/A	N/A	London, ON	Meaford, ON	CLS	English

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
36.	SCM	MCpl Poirier	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty	30 days imprisonment	N/A	Ottawa, ON	Ottawa, ON	CLS	English
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Withdrawn						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						
			s. 125(a) NDA	Willfully Made a False Entry	Not Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
37.	SCM	Capt Thornton	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty	Severe reprimand and $2000 fine	N/A	Borden, ON	London, ON	CFHSG	English
			s. 130 NDA (367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
			s. 117(b) NDA	Improperly Accepting Compensation	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty						
			s. 130 NDA (367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
			s. 117(b) NDA	Improperly Accepting Compensation	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty						
			s. 130 NDA (367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
38.	SCM	Tpr Parcher	s. 90 NDA	Absent Without Leave	Guilty	Reprimand	N/A	Edmonton, AB	Edmonton, AB	CLS	English
			s. 90 NDA	Absent Without Leave	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
39.	SCM	Capt Danis	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty	Severe Reprimand and $2000 fine	N/A	Kingston, ON	London, ON	CFHSG	English
			s. 130 NDA (367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
			s. 117(b) NDA	Improperly Accepting Compensation	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
			s. 117(b) NDA	Improperly Accepting Compensation	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty						
			s. 130 NDA (367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
40.	SCM	Sgt Quinn	s. 130 NDA (s. 267(a) Cr. Code)	Assault with a Weapon	Not Guilty	N/A	N/A	Toronto, ON	Petawawa, ON	CLS	English
			s. 130 NDA (s. 267(a) Cr. Code)	Assault with a Weapon	Not Guilty						
			s. 93 NDA	Behaved in a Disgraceful Manner	Not Guilty						
			s. 95 NDA	Ill-treated a Subordinate	Not Guilty						
41.	SCM	Cpl Healy	s. 130 NDA (s. 87 Cr. Code)	Pointing a Firearm	Not Guilty	N/A	N/A	Edmonton, AB	Kandahar, Afghanistan	CLS	English
			s. 130 NDA (s. 86 Cr. Code)	Careless Use of a Firearm	Withdrawn						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
42.	DCM	Pte Tupper	s. 87(d) NDA	Broke Out of Barracks	Guilty	Dismissal, & 90 days detention	Weapons Prohibition 7 yrs	Gagetown, NB	Gagetown, NB	CLS	English
			s. 90 NDA	Absent Without Leave	Guilty						
			s. 85 NDA	Behaved with Contempt Toward a Superior Officer	Guilty						
			s. 83 NDA	Disobeyed a Lawful Command	Guilty						
			s. 87(c) NDA	Resisted an Escort While Being Apprehended	Guilty						
			s. 90 NDA	Absent Without Leave	Guilty						
			s. 90 NDA	Absent Without Leave	Guilty						
43.	SCM	Cpl Hentges	s. 114 NDA	Stealing	Withdrawn	Reprimand and $1500 fine	N/A	Ottawa, ON	Ottawa, ON	VCDS	English
			s. 125(a) NDA	Willfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Withdrawn						
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Withdrawn						
			s. 130 NDA (s. 362(1)(a) Cr. Code)	Obtaining a Benefit by False Pretences	Withdrawn						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
43.	SCM	Cpl Hentges	s. 130 NDA (s. 362(1)(a) Cr. Code)	Obtaining a Benefit by False Pretences	Withdrawn	Reprimand and $1500 fine	N/A	Ottawa, ONx	Ottawa, ON	VCDS	English
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 117(f) NDA	An Act of a Fraudulent Nature	Guilty						
			s. 125(a) NDA	Wilfully Made a False Statement	Withdrawn						
			s. 117(f) NDA	An Act of Fraudulent Nature	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Withdrawn						
			s. 125(a) NDA	Wilfully Made a False Entry	Guilty						
44.	SCM	CWO Groves	s. 129 NDA	Conduct to the Prejudice	Guilty	Reprimand and $200 fine	N/A	Thunder Bay, ON	Thunder Bay, ON	CLS	English
45.	SCM	Cpl Bahadur	s. 130 NDA (s. 270 Cr. Code)	Assaulting a Peace Officer	Withdrawn	$500 fine	N/A	Gagetown, NB	Gagetown, NB	CLS	English
			s. 116 NDA	Damaging Public Property	Withdrawn						
			s. 97 NDA	Drunkenness	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
46.	SCM	Capt Cooper	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Not Guilty	Severe reprimand and $2000 fine	N/A	Esquimalt, BC	London, ON	CFHSG	English
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
			s. 117(b) NDA	Improperly Accepting Compensation	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Not guilty						
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Not Guilty						
47.	SCM	Cpl Willms	s. 130 NDA (s. 266 Cr. Code)	Assault	Guilty	Reprimand	N/A	Borden, ON	Borden, ON	CMS	English
			s. 95 NDA	Ill-treatment of a Subordinate	Stay						
48.	SCM	Cpl Petten	s. 130 NDA (s. 163.1(4.1) Cr. Code)	Accessing Child Pornography	Guilty	14 days detention	DNA Order	Petawawa, ON	Petawawa, ON	CLS	English
			s. 130 NDA (s. 163.1(4) Cr. Code)	Possessing Child Pornography	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Withdrawn						
			s. 130 NDA (s. 163.1(4.1) Cr. Code)	Accessing Child Pornography	Withdrawn						
			s. 130 NDA (s. 163.1(4) Cr. Code)	Possessing Child Pornography	Withdrawn						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
49.	SCM	Capt Blacquier	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty	Severe reprimand and $2500 fine	N/A	Borden, ON	London, ON	CFHSG	English
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Guilty						
			s. 130 NDA (s. 368(1) Cr. Code)	Uttering a Forged Document	Guilty						
50.	SCM	Cpl Foster	s. 130 NDA (s. 267(a) Cr. Code)	Assault with a Weapon	Guilty of s. 266	$500 fine	N/A	Bagotville, QC	Bagotville, QC	CAS	French
51.	SCM	Sgt Tourigny	s. 130 NDA (s. 266 Cr. Code)	Assault	Not Guilty	$200 fine	N/A	Borden, ON	Borden, ON	CMS	English
			s. 129 NDA	Conduct to the Prejudice	Guilty						
52.	SCM	PO1 McDougall	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Guilty	1 year imprisonment	DNA Order	Trenton, ON	Bailey's Bay, Bermuda	CAS	English
53.	SCM	Cpl Campbell	s. 129 NDA	Conduct to the Prejudice	Guilty	Severe reprimand and $2000 fine	N/A	Esquimalt, BC	Isreal Occupied Syria	CFHSG	English
			s. 129 NDA	Conduct to the Prejudice	Guilty						
			s. 130 NDA (s. 163.1 Cr. Code)	Accessing Child Pornography	Withdrawn						
54.	SCM (*1 trial- 2 accused)	MCpl Steeves Ex-Pte Temple	s. 129 NDA	Conduct to the Prejudice	Not Guilty	N/A	N/A	Gagetown, NB	Gagetown, NB	CLS	English
			s. 129 NDA	Conduct to the Prejudice	Not Guilty						
55.	SCM	Cpl Robinson	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Withdrawn	N/A	N/A	Gagetown, NB	Oromocto, NB	CLS	English
56.	SCM	Capt Emons	s. 130 NDA (s.380 (1) Cr. Code)	Fraud	Guilty	Severe reprimand & $1500 fine	N/A	Cold Lake, AB	London, ON	CFHSG	English
			s. 130 NDA (s. 367 Cr. Code)	Forgery	Not Guilty						
			s. 130 NDA (s. 368 (1) Cr. Code)	Uttering a Forged Document	Not Guilty						
57.	DCM	PO1 Spellman	s. 129 NDA	An Act to the Prejudice	Guilty	Reprimand and $2200 fine	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 90 NDA	Absent Without Leave	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
58.	SCM	Ex-Cpl Stevens	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty	16 mths imprisonment	7 year weapon prohibition	Gagetown, NB	Oromocto, NB	CLS	English
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty						
59.	SCM	MCpl Roche	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty	14 days imprisonment (suspended) and $2000 fine	N/A	Kingston, ON	Kingston, ON	CMP	French
			s. 114 NDA	Stealing	Not Guilty						
60.	SCM	OCdt Maheu	s. 129 NDA	An Act to the Prejudice	Guilty	$200 fine	N/A	St-Jean, QC	St-Jean, QC	CLS	French
61.	SCM	Ex- PO1 Pelletier	s. 130 NDA (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Withdrawn	30 days imprisonment	N/A	Greenwood, NS	Brooklyn, NS	CAS	French
			s. 130 NDA (s. 163.1(4.1) Cr. Code)	Possession of Child Pornography	Withdrawn						
			s. 130 NDA (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Stayed						
			s. 130 NDA (s. 163.1 (4.1) Cr. Code)	Possession of Child Pornography	Guilty						
			s. 130 NDA (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Stayed						
			s. 130 NDA (s. 163.1(4.1) Cr. Code)	Possession of Child Pornography	Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
	DCM	Cpl Sarganas	s. 83 NDA	Disobeyed a Lawful Command	Guilty	21 days detention	N/A	Gagetown, NB	Gagetown, NB	CLS	English
			s. 83 NDA	Disobeyed a Lawful Command	Guilty						
			s. 83 NDA	Disobeyed a Lawful Command	Guilty						
			s. 83 NDA	Disobeyed a Lawful Command	Guilty						
			s. 90 NDA	Absent Without Leave	Guilty						
			s. 90 NDA	Absent Without Leave	Not Guilty						
			s. 85 NDA	Used Insulting Language to a Superior Officer	Guilty						
			s. 86 NDA	Used Provoking Speech toward a person subject to CSD	Guilty						
			s. 85 NDA	Used Insulting Language to a Superior Officer	Not Guilty						
			s. 85 NDA	Used Insulting Language to a Superior Officer	Not Guilty						
63.	DCM	MCpl Bryson	s. 84 NDA	Used Violence Against a Superior Officer	Guilty	30 days imprisonment (suspended), severe reprimand and $3000 fine	N/A	Goose Bay, NF	Goose Bay, NF	CAS	English
			s. 86 NDA	Fought with a Person Subject to CSD	Stay						
			s. 97 NDA	Drunkenness	Guilty						
64.	DCM	Pte Crockatt	s. 83 NDA	Disobeyed a Lawful Command	Guilty	15 days detention	N/A	Gagetown, NB	Kandahar, Afghanistan	CLS	English
65.	SCM	Ex-Cpl O'Toole	s. 130 NDA (s. 4(1) CDSA)	Possession	Not Guilty	N/A	N/A	Kingston, ON	Kingston, ON	CANOSCOM	English
66.	SCM	OS MacPhail	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Not Guilty	Reprimand and $500 fine	N/A	St. Jean, QC	St. Jean, QC	CMS	English
			s. 93 NDA	Disgraceful Conduct	Guilty						
			s. 97 NDA	Drunkenness	Guilty						
67.	SCM	Ex-Pte Brisson	s. 118.1 NDA	Failed to appear before a service tribunal	Withdrawn	N/A	N/A	Gagetown, NB	Gagetown, NB	CLS	English

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
68.	SCM	LS Sharpe	s. 130 NDA (s. 267(a) Cr. Code)	Assault with a weapon	Guilty	Reprimand and $1000 fine	N/A	Trenton, ON	Trenton, ON	CAS	English
			s. 130 NDA (s. 86(1) Cr. Code)	Careless use of a weapon	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
69.	SCM	Ex-Pte Chiasson	s. 130 NDA (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Guilty	14 days imprisonment	DNA Order	Borden, ON	Borden, ON	CDA	English
70.	SCM	LS Anderson	s. 114 NDA	Stealing	Guilty	Reduction in rank	N/A	Chilliwack, BC	Chilliwack, BC	CLS	English
			s. 114 NDA	Stealing	Guilty						
			s. 129 NDA	An Act to the Prejudice	Not Guilty						
71.	SCM	Sgt Schaefer	s. 130 NDA (s. 267 Cr. Code)	Assault Causing Bodily Harm	Guilty of assault	Severe reprimand and $5400 fine	N/A	Chilliwack, BC	Chilliwack, BC	CLS	English
			s. 130 NDA (s. 266 Cr. Code)	Assault	Guilty						
72.	SCM	CPO2 Gaudreau	s. 130 NDA (s. 80 FAA)	Wilfully Signed a False Certificate	Guilty	Reprimand and $200 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
73.	DCM	Maj Braun	s. 130 NDA (s. 80 FAA)	Conspired to Defraud Her Majesty	Withdrawn	Severe reprimand and $500 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 125 NDA	Willfully Made a False Statement in a document	Guilty						
74.	SCM	Sgt Duhaime	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Not Guilty	$1200 fine	N/A	Valcartier, QC	Wainwright, AB	CLS	French
			s. 95 NDA	Ill-treatment of a subordinate	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
68.	SCM	LS Sharpe	s. 130 NDA (s. 267(a) Cr. Code)	Assault with a weapon	Guilty	Reprimand and $1000 fine	N/A	Trenton, ON	Trenton, ON	CAS	English
			s. 130 NDA (s. 86(1) Cr. Code)	Careless use of a weapon	Not Guilty						
			s. 129 NDA	An Act to the Prejudice	Guilty						
69.	SCM	Ex-Pte Chiasson	s. 130 NDA (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Guilty	14 days imprisonment	DNA Order	Borden, ON	Borden, ON	CDA	English
70.	SCM	LS Anderson	s. 114 NDA	Stealing	Guilty	Reduction in rank	N/A	Chilliwack, BC	Chilliwack, BC	CLS	English
			s. 114 NDA	Stealing	Guilty						
			s. 129 NDA	An Act to the Prejudice	Not Guilty						
71.	SCM	Sgt Schaefer	s. 130 NDA (s. 267 Cr. Code)	Assault Causing Bodily Harm	Guilty of assault	Severe reprimand and $5400 fine	N/A	Chilliwack, BC	Chilliwack, BC	CLS	English
			s. 130 NDA (s. 266 Cr. Code)	Assault	Guilty						
72.	SCM	CPO2 Gaudreau	s. 130 NDA (s. 80 FAA)	Wilfully Signed a False Certificate	Guilty	Reprimand and $200 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
73.	DCM	Maj Braun	s. 130 NDA (s. 80 FAA)	Conspired to Defraud Her Majesty	Withdrawn	Severe reprimand and $500 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 125 NDA	Willfully Made a False Statement in a document	Guilty						
74.	SCM	Sgt Duhaime	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Not Guilty	$1200 fine	N/A	Valcartier, QC	Wainwright, AB	CLS	French
			s. 95 NDA	Ill-treatment of a subordinate	Guilty						

	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
75.	DCM	Maj Arnett	s. 130 NDA (s. 80 FAA)	Willfully Signed a False Certificate	Guilty	Severe reprimand and $1750 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 130 NDA (s. 80 FAA)	Willfully Signed a False Certificate	Guilty						
			s. 130 NDA (s. 80 FAA)	Conspired to Defraud Her Majesty	Withdrawn						
76.	SCM	Pte Castle	s. 130 NDA (s. 267 Cr. Code)	Assault Causing Bodily Harm	Not Guilty	Reprimand and $500 fine	N/A	Petawawa, ON	Petawawa, ON	CLS	English
			s. 101.1 NDA	Failing to Comply with Conditions	Guilty						
77.	SCM	Ex-Pte Gabriel	s. 130 NDA (s. 266 Cr. Code)	Assault	Guilty	Reprimand and $800 fine	N/A	Montreal, QC	St-Jean, QC	CDA	English
			s. 93 NDA	Behaved in a Disgraceful Manner	Withdrawn						
			s. 129 NDA	Conduct to the Prejudice	Guilty						
78.	SCM	Ocdt Warren	s. 130 NDA (s. 267 Cr. Code)	Assault Causing Bodily Harm	Guilty	21 days imprisonment	DNA Order	Kingston, ON	Kingston, ON	CDA	English
			s. 86 NDA	Used Provoking Speeches	Withdrawn						
			s. 97 NDA	Drunkenness	Guilty						

ANNEX C – **ANNEX B**

Disposition By Court Martial

	2007-2008	
	#	%
Guilty of at least one charge	62	78
Not guilty of any charges	12	15
Stay of Proceedings	3	4
Withdrawal of all charges	2	3
Other (NDA section 202.12)	0	0
Total	**79**[1]	**100**

Sentences

Punishment Type	2007-2008	
	#	%
Dismissal	1	1
Imprisonment	10	10
Detention	7	7
Reduction in Rank	2	2
Severe Reprimand	16	17
Reprimand	18	17
Fine	44	45
Confined to Barracks	1	1
Extra Work and Drill	0	0
Caution	0	0
Total	**99**	**100**

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[1] Two accused were tried in a joint trial; therefore, two findings were made at one court martial.

Language of Trial

	2007-2008	
	#	%
Trial in English	71	91
Trial in French	7	9
Total	**78**	**100**

Courts Martial By Command

Command	2007-2008	
	#	%
CLS	35	45
CMS	16	21
CAS	8	11
CEFCOM	2	3
CFHSG	10	14
CANSOFCOM	1	1
NDHQ	2	3
CANOSCOM	1	1
CDA	3	1
Total	**78**	**100**

Courts Martial By Rank

	2007-2008	
	#	%
Private and Corporal (Includes Master Corporal*)	48	60
Sergeant to Chief Warrant Officer	15	20
Officer	16	20
Other	0	0
Total	**79**[2]	**100**

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[2] Two accused were tried in a joint trial; therefore two findings were made at one court martial.

Type of Court Martial

	2007-2008	
	#	%
Standing Court Martial	62	79
Disciplinary Court Martial	16	21
Special General Court Martial	0	0
General Court Martial	0	0
Total	**78**	**100**

ANNEX C – **ANNEX C**

CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
S.C.C. File No. 32181	Her Majesty the Queen	Cpl Grant	Legality of Finding / Constitutional issue	Leave to Appeal to the Supreme Court dismissed
493	Cpl Grant	Her Majesty the Queen	Legality of Finding / Constitutional issue	Appeal Granted
494	Cpl Kennedy	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Appeal Dismissed
495	Capt Nociar	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing
496	Ex-Pte Legresley	Her Majesty the Queen	Legality of Finding	Appeal Dismissed
497	Ex-Pte Taylor	Her Majesty the Queen	Severity of Sentence	Appeal Dismissed
498	Ocdt Trépanier	Her Majesty the Queen	Legality of Finding/ Constitutional issue	Ongoing
499	MCpl McRae	Her Majesty the Queen	Legality of Finding / Constitutional issue	Appeal Abandoned
500	Ex-Capt Savic	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Appeal Dismissed
501	LS Freudenreich	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Appeal Dismissed
502	Her Majesty the Queen	Sgt N. Couture	Legality of Decision	Ongoing
503	MCpl Billard	Her Majesty the Queen	Severity of Sentence	Ongoing

CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
504	Ex-Cpl D.D. Beek	Her Majesty the Queen	Legality of Finding / Constitutional issue Severity of Sentence	Ongoing
505	PO1 A.E. Libby	Her Majesty the Queen	Legality of Sentence / Severity of Sentence	Appeal Dismissed
506	Pte Khadr	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing
507	Cpl Hentges	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing
508	Pte Tupper	Her Majesty the Queen	Severity of Sentence	Ongoing
509	MS Willms	Her Majesty the Queen	Legality of Finding	Ongoing
510	PO1 McDougall	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing

ANNEX D

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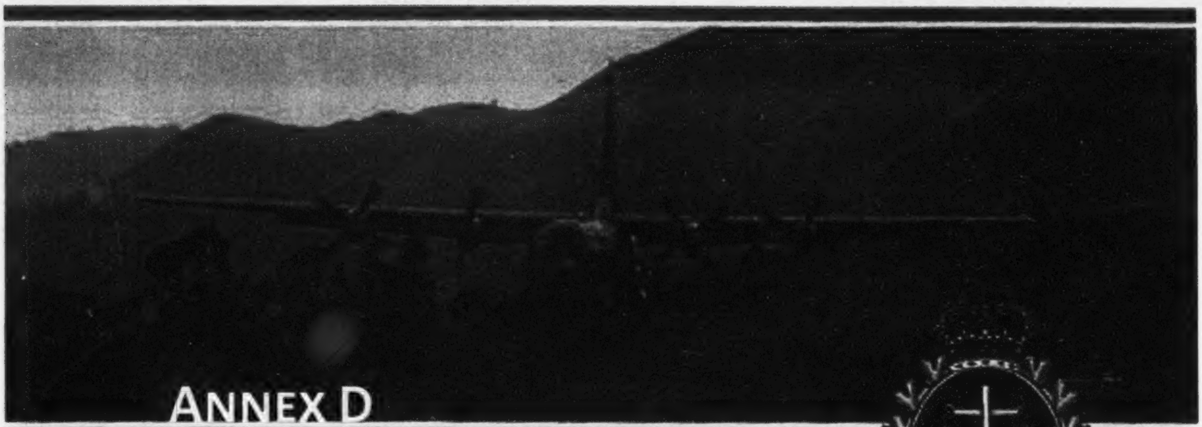
2007-2008 ANNUAL REPORT
DIRECTOR OF DEFENCE COUNSEL SERVICES

CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
504	Ex-Cpl D.D. Beek	Her Majesty the Queen	Legality of Finding / Constitutional issue Severity of Sentence	Ongoing
505	PO1 A.E. Libby	Her Majesty the Queen	Legality of Sentence / Severity of Sentence	Appeal Dismissed
506	Pte Khadr	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing
507	Cpl Hentges	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing
508	Pte Tupper	Her Majesty the Queen	Severity of Sentence	Ongoing
509	MS Willms	Her Majesty the Queen	Legality of Finding	Ongoing
510	PO1 McDougall	Her Majesty the Queen	Legality of Finding / Severity of Sentence	Ongoing



Annex D

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2007-2008 Annual Report
Director of Defence Counsel Services

DIRECTOR OF DEFENCE COUNSEL SERVICES 2007-2008 ANNUAL REPORT

Prepared by Lieutenant-Colonel Jean-Marie Dugas

INTRODUCTION

1. This is the ninth annual report of the Defence Counsel Services (DCS) since its creation. It is submitted to the Judge Advocate General (JAG), Brigadier General KW Watkin. The Director DCS exercises his functions by virtue of the *National Defence Act* (*NDA*) under the JAG's general direction. The JAG shows a strong interest in the military justice system and supports efforts to become more effective and efficient. Some suggested initiatives, including an in-depth review and analysis of DDCS operations, have been well-received. An external evaluation might help improve procedures and the well-being of personnel in the medium and long term.
2. Changes in the quantity and experience of legal personnel over this past year have severely taxed our operations. Some of the repercussions of these changes are described more fully in the following pages, but the principal consequence remains the budget. Past and future transfers, coupled with changes in the policies and procedures of the Court Martial Administrator (CMA) and the Court, have had a significant impact on persons subject to the *Code of Service Discipline*. Certain individuals have had the legal officer assigned to their cases changed, in some cases more than once. This has had an impact on the perception of DDCS services.
3. The presentation of this report is in compliance with Article 101.20(5) of *The Queen's Regulations and Orders for the Canadian Forces* (QR&O). It is the fourth report produced under my direction and covers the period from 1 April 2007 to 31 March 2008. It includes the following elements:
   - An overview of DDCS and the changes instituted over the past year;
   - A summary of duties and responsibilities;

- An overview of relations among the Director, personnel, DDCS legal officers, the Judge Advocate General (JAG) and the chain of command;
- Services delivered over the period of this report; and
- General DDCS activities.

4. There are currently four (4) regular military judges. Given the transfers that took place in the year covered by this report, these are more judges than regular force DDCS trial lawyers. This situation has seriously complicated the management of defence cases, particularly since a regulatory constraint limited DDCS's authority to commit funds for several months. Once restored, this authority to commit funds was accompanied by an increased expense limit and an appreciable opening-up of the budget. DDCS retained the services of a record number of civilian lawyers to share the burden of the increased volume. Reserve legal officers also made an outstanding contribution.

5. Despite the flexibility of the JAG Office with respect to the budget, the pace imposed by judicial availability stemming from this addition of judges to courts martial did have a real impact on the individual members of the regular force team of military lawyers. The additional pressure and stress was palpable on a defence team denied the services of one legal officer during the past year. They made maximum use of reserve legal officers and also created two new positions which, however, remain unfilled.

6. This authorization to commit funds to retain the temporary services of civilian lawyers will also enable us, to some extent, to meet CMA requests and requirements. The number of cases handled this year, either fully or partially, totalled ninety-six (96). The declared objective was to dispose of as many cases as possible, taking into account significant delays in several cases.

7. The year can be summed up as follows:

   a. 214 active court martial cases;

   b. 78 courts martial begun and completed, of which 7 were in French;

   c. 138 days in courts martial;

d. 1,500[1] opinions and advice to CF members and persons undergoing trial;

e. 10 cases to the Court Martial Appeal Court (CMAC);

f. Three cases of assistance prior to appearance before boards of inquiry; and

g. Six interventions during summary investigations.

8. The proposed changes to the *NDA* were retabled during this parliamentary session. The proposals relating to the Appeal Committee did not meet defence requests for better support of persons undergoing trial.

9. From our standpoint, the policies and directives governing the convening of courts martial continue to be the major problem with the military justice system. The resulting system and the existing policy of the Court fail to offer sufficient flexibility given the reality and specifics of the military defence process. For example, the preferred recourse for changing a set hearing date, fixed by the CMA, is through a complex judicial procedure. Counsel must submit a written request with notice, followed by an appearance before the court. This represents a considerable outlay of time and personnel, not to mention the cost of engaging defence lawyers, if not assumed internally.

10. To be more specific, the *Court Martial Scheduling Policy* should be amended because it favours the prosecution over the defence of persons undergoing trial. Choosing a schedule has become a question of mathematics rather than of facts. Since the prosecution has complete control of a case until the charge sheet is filed with the CMA, the defence usually finds out about it at the same time, not to mention the fact that it is often deprived of the disclosure that comes only later. It would preferable, therefore, if the policy were to reflect the quasi-judicial nature of managing a role and if it were to be fairer to those undergoing trial.

11. The number of disciplinary cases processed still vastly outnumbers the number of courts martial convened or held. Some cases set for hearing were withdrawn just before the proceedings or even when the hearing was before the court.

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[1] This year, this number is approximate because IT system modifications disturbed data collection. We changed from local internal collection to remote Internet media.

This is a wasteful use of resources because it represents a loss of judicial availability and a significant expenditure of public funds. The CMA has also suspended cases because of a shortage of judicial availability or even, in some cases, when they were unable to find individuals undergoing trial following their release and relocation.

STRUCTURE OF DDCS OFFICE

12. All civilian personnel positions are occupied. This should allow for better monitoring of administrative procedures. The reclassification of the organization's secretary position should ensure greater stability.

13. Among CF members, two senior legal officers have gone on advanced language training. They will return during next summer's postings. Another senior legal officer began his pre-deployment training program in the fall, which severely curtailed his availability for active cases in Court. Another legal officer obtained his release in the summer of 2007 and has been directly transferred to the Reserve. All this activity has had a direct impact on the services offered to the defendants because in some cases we have had to replace the lawyers. The hiring process for the Reserve positions is taking shape, and consultations are ongoing.

14. The support provided by the JAG Office and IT team has helped our operations enormously. The constant upgrading of our electronic equipment is allowing our personnel to focus more on operations. The JAG organization is sensitive to the IT needs of reserve lawyers because they still enjoy only limited access to the defence network and information on military justice.

DUTIES AND RESPONSIBILITIES

15. There were no changes in DDCS duties and responsibilities under the *NDA*. The principal activities offered and provided are governed by the QR&Os and are summarized below:

Military lawyer services:

- To detained persons:

  - At hearings before a military judge, under subsection 159(1) of the *NDA* to determine retention in custody [QR&O 101.20(2) (e)].
- To accused persons:
  - At Courts Martial [QR&O 101.20(2)(f)];
  - At hearings to determine the fitness of the accused person to stand trial, where there are reasonable grounds to believe that the accused person is unfit to stand trial [QR&O 101.20(2)(b)]; and
  - At hearings as to the sufficiency of evidence to put the accused person on trial in cases where a finding of unfit to stand trial has been made [QR&O 101.20(3)(c)].
- To individuals sentenced by court martial to detention or imprisonment:
  - At hearings to seek release pending appeal [QR&O 101.20(3)(b)];
    At reviews of undertakings for release pending appeal [QR&O 101.20(3)(b) and 118.23]; and
  - At cancellation of a release order [QR&O 118.23].
- To the respondent (offender) at Court Martial Appeal Court of Canada or Supreme Court of Canada hearings where prosecution authorities appeal the legality of a finding or the severity of a sentence awarded by court martial [QR&O 101.20(2)(g)];
- To a person on an appeal or an application for leave to appeal to the Court Martial Appeal Court of Canada or the Supreme Court of Canada, with the approval of the Appeal Committee [QR&O 101.20(2)(h)].

Advisory Services:

- To persons arrested or detained in respect of a service offence pursuant to Section 10(b) of the *Canadian Charter of Rights and Freedoms* (the Charter), on a 24/7 basis [QR&O 101.20(2)(a)];
- To assisting officers and accused persons with respect to the making of an election to be tried by court martial pursuant to QR&O 108.17 and 108.18 [QR&O 101.29(2)(d)];

- To assisting officers or accused persons on matters of a general nature relating to summary trials [QR&O 101.20(2)(c)];
- To persons subject to investigation under the *Code of Service Discipline*, a summary investigation or a board of inquiry [QR&O 101.20(2)(i)].

RELATIONSHIP DDCS, PERSONNEL, THE JAG AND THE CHAIN OF COMMAND

16. The JAG continues to support defence activities and to ensure that the necessary funding is available to fulfill the mandate of DDCS. Its problems regarding the replacement of military personnel remain unsolved, however, because the various parts of the organization have equally valid but conflicting needs in respect of DDCS. The result is competition and negotiations that limit the number of appropriate candidates for the tasks to be accomplished.

17. The JAG did not issue any directions of general application for military defence counsel during this period in virtue of its power of general direction over DDCS functions, under Section 249.2 of the *NDA*.

PROFESSIONAL DEVELOPMENT

18. DDCS legal officers were accorded the support they require for national professional development in criminal law under the Canadian Criminal Law Program in order to ensure the ongoing education of all regular lawyers and one reserve lawyer. In addition to their association with the Canadian Bar and their respective bars, a DDCS counsel request to participate as members of the International Criminal Defence Attorneys Association and Criminal Lawyers' Association won approval.

19. Lawyers attended a military justice training course and appreciated this continuing legal education.

BUDGETARY SITUATION

20. The increased assignment of reserve counsel to address the delays in courts martial will require a review of the DDCS budget. With the support of JAG, the Comptroller has regularly increased allocations to address this problem and meet the budgetary requirements for civilian lawyers.

21. DDCS financial authority has now been settled. It has risen from $5,000 to $75,000, which will free DDCS from the need to seek outside approval for medical expertise required in courts martial. This applies as well to the retention of civilian lawyers on cases. As a direct result, delays in obtaining medical expertise have decreased appreciably. The debate concerning the approval of contracts for civilian legal services in situations that require them to fulfill a mandate was resolved in summer 2007. The matrix allows DDCS to contract in this manner and to retain the services of lawyers practicing military law in order to ensure proper representation for defendants.
22. The defence continues frequently to assume the charges for transcribing witnesses' statements, a cost formerly covered by the military police and prosecution at the time of disclosure. The transfer of these substantial costs should henceforth be incorporated into the budget planning process.

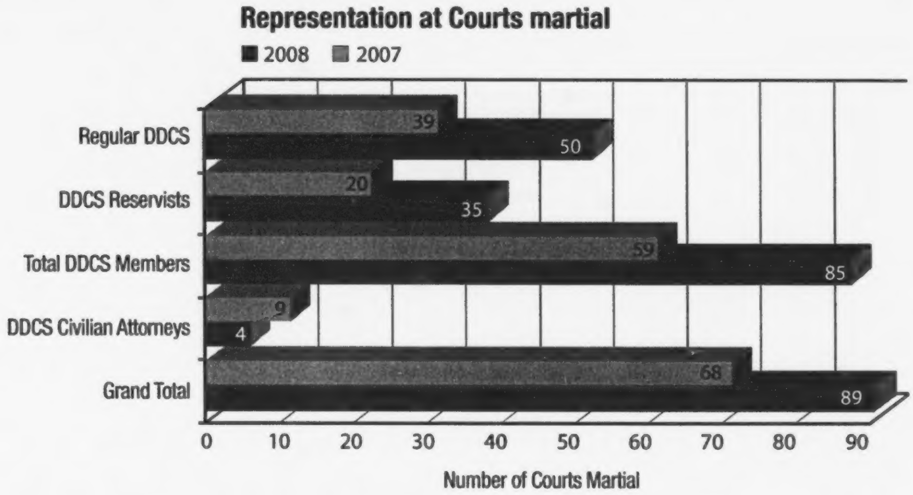
AVAILABLE SERVICES

Legal Services

Courts martial

23. When facing court martial, accused persons have the right to be represented by a DDCS counsel at public expense, to retain legal counsel at their own expense or to represent themselves.
24. During the reporting period, a total of ninety-four (94) undertakings involving DDCS were initiated before court martial. Of that number, eighty-nine (89) were completed. Other trials in progress or already set will be accounted for next year. Of the eighty-nine (89) cases shown in the following graph, only four (4) were conducted and completed by civilian lawyers, despite the fact that a larger number of cases were contracted to such lawyers this year (eight (8) cases). The distribution of representation at these trials was as follows:

Number of Courts Martial



25. Pursuant to subsection 249.21(2) of the *NDA*, DDCS, on receiving a request for representation, may temporarily retain civilian counsel at public expense. This power is being exercised more frequently at the present time owing to the reduced availability of internal resources. Recourse to civilian counsel, however, poses two sorts of problems: firstly, there are very few lawyers who possess relevant and immediate expertise (which causes constant conflict with Treasury Board's standards for awarding contracts) and, secondly, in cases that attract the interest of inexperienced lawyers, DDCS indirectly defrays, through the time and training invested in those cases, the costs of their professional development in military law. And there is also the time they spend providing them with documentation and references. JAG, in collaboration with DDCS, is currently creating a permanent list.
26. As shown in the above graph, DDCS is continuing to push strongly for the involvement of reserve lawyers (seven (7)), which is a direct consequence of the changes in personnel and the need for experience in criminal and disciplinary issues. Once again, these lawyers were enlisted to reduce the backlog. DDCS reserve lawyers remain a valuable and critical resource.

CMAC

27. DDCS filed 14 appeals with the CMAC. Of that number, the Appeal Committee authorized DDCS to act on behalf of the defendants in ten (10) cases in 2007-2008. Three (3)

cases were held over from the previous fiscal year, and the others were filed during the year under review. One appellant abandoned his appeal one week before the hearing.

28. Appellants submitted requests to the Appeal Committee for representations by DDCS before CMAC in accordance with Article 101.20(2)(h) of the QR&Os. All these cases, excepting one involving a Crown cross-appeal, required approval from the Appeal Committee. Three (3) cases were rejected for "lack of professional merit," contradicting the representations of the defence. One of those cases is still pending with the court clerk; the others are not the subject of any representation.

29. Over the reporting period, DDCS attorneys were involved to varying degrees in the following appeals:

- **Beek**: The appellant is challenging the constitutionality of Section 165.14 of the *NDA*, which gives the Director of Military Prosecutions the power to determine the type of court martial to be used in judging the accused. The appellant is also contesting the constitutionality of Section 139 of the *NDA* on the grounds that it unduly limits the power of military judges to impose appropriate sentences in all cases at the bar. Specifically, Section 139 does not give the military judge the option of imposing conditional sentences or probation.
- **Billard**: In his notice of appeal and his application to obtain leave to appeal, the appellant, who was sentenced to 21 days' detention for committing an act to the prejudice to good order and discipline, is claiming that his sentence is excessively severe.
- **Couture:** The appellant, Her Majesty the Queen, is appealing the decision of a military judge who terminated proceedings against the respondent because the judge determined that the failure to abide by the provisions of Article 107.03 of the QR&O invalidated *ab initio* the charges against the respondent.
- **Freudenreich:** In his notice of appeal, the appellant qualified a military judge's decision as unreasonable and asserted that the sentence imposed on him was too severe. The finding of the Appeal Committee that the case lacked professional merit ruled out any involvement by DDCS counsel. The appeal was ultimately rejected owing to the appellant's continued inability to produce his appeal factum.

- **Grant:** At the CMAC, the appellant had contested the court martial decision to deny his requests under Sections 7 and 11 (d) of the Charter, specifically citing the military judge's faulty appraisal of the evidence and his failure to provide all the grounds behind the conviction. The CMAC granted the appeal, quashing the conviction and returning the case to the commanding officer for the charge to be handled through summary trial if the commanding officer still felt it necessary. Her Majesty the Queen presented an application for leave to appeal the decision to the Supreme Court of Canada. The application was rejected.
- **Hentges:** DDCS still has no official involvement in this case but is awaiting the Appeal Committee's ruling on whether or not to fund the appeal. In his notice of appeal, the appellant is alleging that the military judge erred by reserving his decision on the preliminary request for a stay of proceedings based on the violation of the right to be judged in a reasonable time following the trial. The appellant also alleges that the military judge erred in rejecting that application.
- **Khadr:** DDCS cannot represent the appellant in this case. The Appeal Committee ruled that this appeal lacks professional merit. The DDCS presented a second application to the Appeal Committee for reconsideration, but that request was also turned down for lack of professional merit. In his notice of appeal, however, the appellant argues that the military judge erred in rejecting his preliminary request under Section 7 of the Charter for violating his right to be judged by an independent and impartial tribunal, the complainants being "judges and parties." Furthermore, the appellant is seeking leave to appeal his sentence, which he deems excessive and not based on the evidence.
- **Libby:** In his notice of appeal and his application for leave to appeal, the appellant submitted that the military judge had committed several errors in law, specifically by incorrectly applying the legal principles related to witness identification and by making the accused bear the burden of proof. DDCS could not be involved in this case owing to the Appeal Committee's decision that the appeal lacked professional merit. Left to his own devices, the appellant failed to present his

factual and legal memorandum before the deadline, and CMAC denied his appeal for that reason.

- **McDougall:** In his notice of appeal and application for leave to appeal his sentence, the appellant alleges that the military judge made a number of errors in law, mainly during appraisal of the evidence. DDCS has had no involvement in this case because the appellant has never requested its assistance. To date, it would appear that the CMAC has yet to make a ruling in this case.
- **McRea:** As in Beek (above), the appellant claimed that his fundamental right to choose the type of court martial before which he would appear had been violated. We would also note the appellant's allegation that the military judge erred in denying his preliminary request relating to the violation of his right to be judged within a reasonable time. The CMAC will not decide on the merit of the appellant's arguments because the appellant filed a notice of abandonment of his appeal on 17 March.
- **Taylor:** The appellant asked the CMAC to rule on the notion of public interest in pursuing this case and on the authority of the judge to reject the joint submission without advising the parties beforehand. The CMAC granted leave to appeal the sentence but did not change the ruling of the court martial.
- **Trépanier:** As in Beek and McRea, the appellant is asking the Court of Appeal to review the military judge's decision to reject the constitutional challenge based on the violation of the right of the accused to choose the type of court martial before the judge. The hearing took place on 28 March 2008, and the decision is pending.
- **Tupper:** In his notice of appeal, the appellant alleges that the military judge failed to properly adduce the evidence on which the sentence imposed on him was based. In addition, the appellant claims that his sentence is overly severe.
- **Willms:** In his notice of appeal, the appellant alleges that the military judge's ruling of guilty is unreasonable and unsupported by the evidence. More specifically, the appellant maintains that the military judge erred in finding that the complainant had not agreed to the application of force and/or in applying the legal principles related to the accused's sincere but mistaken belief that the complainant had given consent.

Judicial review of detention

30. DDCS has been involved three (3) requests for judicial review under Article 105.24 of the QR&Os. The procedure for convening hearings should be clearly delineated. This is a serious problem because information relating to detention is left to the whims of the chain of command, which has not shown an inclination to move swiftly. For example, it takes five (5) days for the defence to be notified of the detention of one of its members. It sometimes takes even longer for the defendant to appear before the Court. And in one specific case, the member was detained for observation for seven (7) additional days owing to a shortage of immediately available resources to respond to the request for a review by the military tribunal.

Advisory Services

31. This bilingual service is accessible at all times, free of charge and without interruption to all CF members and persons charged under the *Code of Service Discipline* in Canada, deployed or in service anywhere in the world. DDCS lawyers provide for telephone communications via a toll-free number available throughout the Canadian Forces and written communications via the always popular and growing e-mail service. Use is divided as follows:

    - 800 number to ensure access to legal advice at the time of arrest or detention; available to military police and other military authorities likely to intervene in disciplinary and criminal investigations;
    - Regular and direct telephone access is available to persons subject to the *Code of Service Discipline* who wish to obtain advice and opinions in the interval between the court martial and summary trial or on any disciplinary or other issues authorized by the QR&Os; and
    - E-mail is frequently used for initial contact or to obtain information.

    During the reporting period, DDCS handled roughly 1,500 phone requests. The duration of those calls varied, but the average was close to 15 minutes. Activities related to this service totalled a little less than 400 hours.

32. As shown by the collected data, the advisory services provided by DDCS remain an important aspect of their operations. Every day, deployments, international operations and associated activities generate a host of increasingly complex legal requirements that go far beyond the need to help accused persons choose the type of tribunal they prefer. The employment of a cohort of reserve lawyers has merely heightened this complexity. This "essential" service is helping to protect the fundamental rights of CF members and people involved in the justice system.

33. The 24-hour service line has revealed a general ignorance of the rights of defendants and the obligations of units. DDCS is continuing to work on a revised website that will provide more information. Certain disciplinary situations may be prevented from further deteriorating through the intervention of DDCS lawyers.

GENERAL ACTIVITIES AND COMMENTS

34. This section reviews the problems raised and addressed by users of our service this reporting year. At the top of the list, we deplore the lack of access to the range of sentences available in similar cases under the *Criminal Code of Canada*. Individuals subject to trial under the *Code of Service Discipline* do not always enjoy the option of release or probation, yet these sentences may be highly appropriate in many instances. As regards probation, we believe that agreements could be reached with local probation authorities. In similar situations involving convictions, we feel that the court martial system is ill-equipped, given the limited, even obsolete, nature of the available options. As a result, members sometimes find themselves with a criminal record rather than a release or discharge within the meaning of the *Criminal Code*.

35. While not supported by hard statistics, the number of defendants suffering from mental problems of varying severity was again significant this year. These individuals, who deserve support and medical monitoring, do not receive any supervision after sentencing. The military system has not adapted to this reality, but the need is undeniably there. The military justice system should review this state of affairs and consider appropriate solutions.

36. As noted in earlier reports, the anticipated withdrawal of fines before completion of the appeal procedures makes the sentences easier to administer but still represents a heavy burden for the offender. In our view, this state of affairs is unjustified, and the procedure should be modified to suspend the payment of fines during appeals.

37. Our services have been called upon on several occasions for boards of inquiry and summary investigations, but these situations are still rare in proportion to the total number of such investigations. We are trying to ensure greater visibility for our services in this area, given possible future consequences.

38. A hearing was held pursuant to Article 101.20(3)(c) of the QR&O in order to determine if there was still sufficient evidence to order the defendant to stand trial. The hearing was associated with the events in Somalia, where the former member was originally declared unfit to stand trial. The precise fate of this former member is still awaiting the release of the report of the committee charged with evaluating the former member. First scheduled for July 2007 and then October, the hearing will now take place in 2008.

39. The final process of preparing rules governing the legal representation of members accused of criminal offenses before a foreign tribunal is currently under way and should see completion next year.

40. DDCS has been involved with Military Justice Directorate in administering legal aid funds for accused members abroad. However, no requests were accepted during the review period. Such cases are administered pursuant to *Canadian Forces Administrative Order* 111-2: Employment of Civilian Defence Counsel in Foreign Criminal Court.

CONCLUSIONS

41. The primary objective of DDCS lawyers is to ensure that individuals subject to trial are able to obtain justice in a timely manner. The human and financial resources allocated this year and the flexibility in our budget were of great help to us in achieving this objective. We saw significant improvements and a real willingness to cut the amount of time before the disciplinary hearings.

42. We should focus our efforts on the procedures leading up to the hearings. The idea of timeliness is currently based on the filing of the request by the prosecution rather than on the information received by the defence. This state of affairs continues to be unfair for those subject to trial, particularly in light of defence resources currently available. Other measures, including the selection of the members of the disciplinary courts martial, are prejudicial the principles of transparency, equity and judicial impartiality. The selection of members is done in the absence of the accused through a poorly managed process that leaves far too much room for personal interpretation. Such an in absentia procedure increases inequity and consequently affects the defendant's right to a fair and impartial trial in disciplinary and general courts martial.
43. In accordance with the request of the DDCS, DND has authorized the extension of its mandate for a period of four (4) years.

ANNEX E

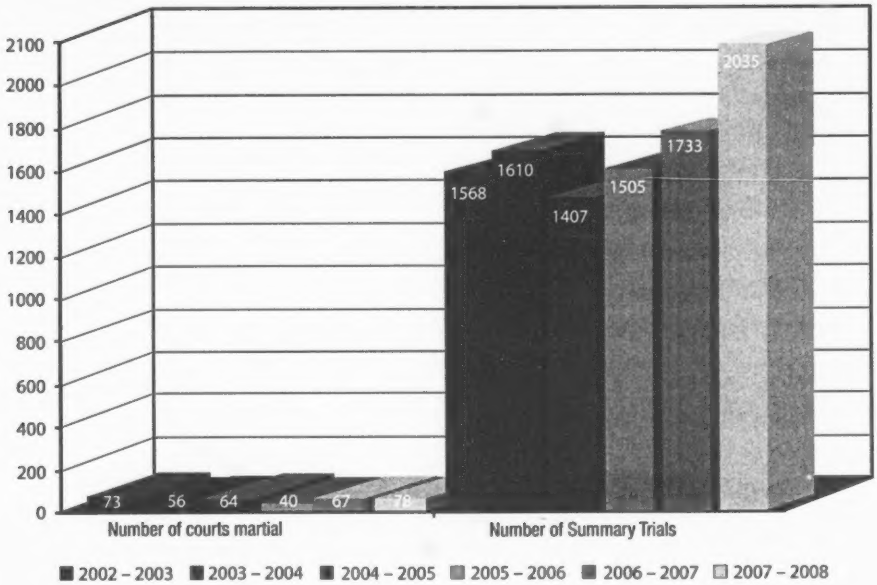
Contents

SUMMARY TRIALS
YEAR IN REVIEW – STATISTICS:
1 APRIL 2007 – 31 MARCH 2008

Distribution of Service Tribunals

	2006-2007		2007-2008	
	#	%	#	%
Number of courts martial	67	4	78	4
Number of summary trials	1733	96	2035	96
Total	**1800**	**100**	**2113**	**100**

Distribution of Disciplinary Proceedings Year to Year Comparison



Election to Court Martial

	2007-2008	
	#	%
Number of cases where member was offered the right to be tried by court martial	599	100
Number of persons electing court martial when offered	39	6.51

Language of Summary Trials

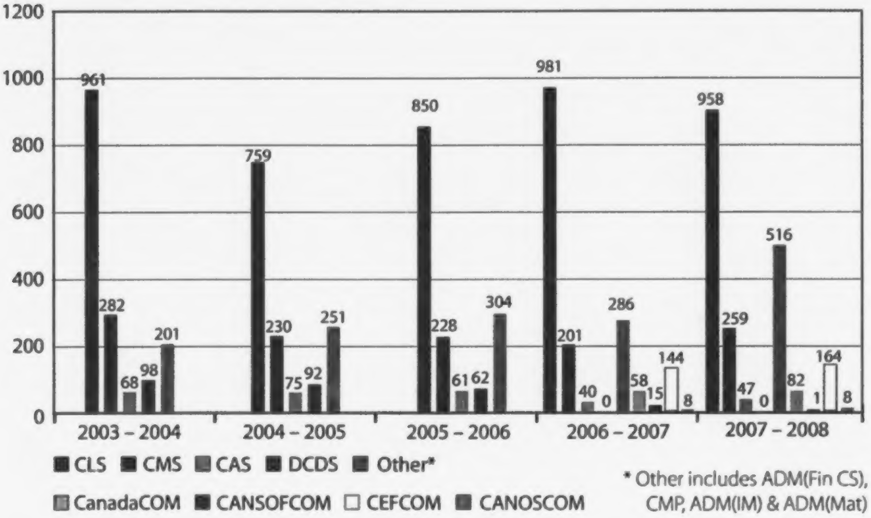
Language	2006-2007		2007-2008	
	#	%	#	%
Number in English	1294	76	1546	76
Number in French	439	24	489	24
Total	**1733**	**100**	**2035**	**100**

Note: (1) The statistics in this annex are current as of 27 November 2008.
(2) For statistics relating to prior years, refer to previous JAG Annual Reports.

Summary Trial by Command

Command	2006-2007		2007-2008	
	#	%	#	%
Vice Chief of the Defence Staff (VCDS)	1	0.06	5	0.25
Canada Command (CanadaCOM)	58	3.35	82	4.03
Canada Operational Support Command (CANOSCOM)	8	0.46	8	0.39
Canada Special Forces Command (CANSOFCOM)	15	0.87	1	0.05
Canada Expeditionary Force Command (CEFCOM)	144	8.31	164	8.06
Chief of the Maritime Staff (CMS)	201	11.60	259	12.73
Chief of the Land Staff (CLS)	981	55.61	958	47.08
Chief of the Air Staff (CAS)	40	2.31	47	2.31
Associate Deputy Minister (Finance and Corporate Services) (ADM (Fin CS))	2	0.12	0	0
Chief Military Personnel (CMP)	260	15.00	487	23.92
Associate Deputy Minister (Information Management) (ADM (IM))	18	1.04	22	1.08
Associate Deputy Minister (Materiel) (ADM (Mat))	5	0.29	2	0.10
Total	**1733**	**100**	**2035**	**100**

Command Year to Year comparison



* Other includes ADM(Fin CS), CMP, ADM(IM) & ADM(Mat)

Summary Trial by Rank

Rank	2006-2007		2007-2008	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1513	87	1768	87
Sergeant to Chief Warrant Officer	77	4	75	4
Officer	143	8	192	9
Number of cases	**1733**	**100**	**2035**	**100**

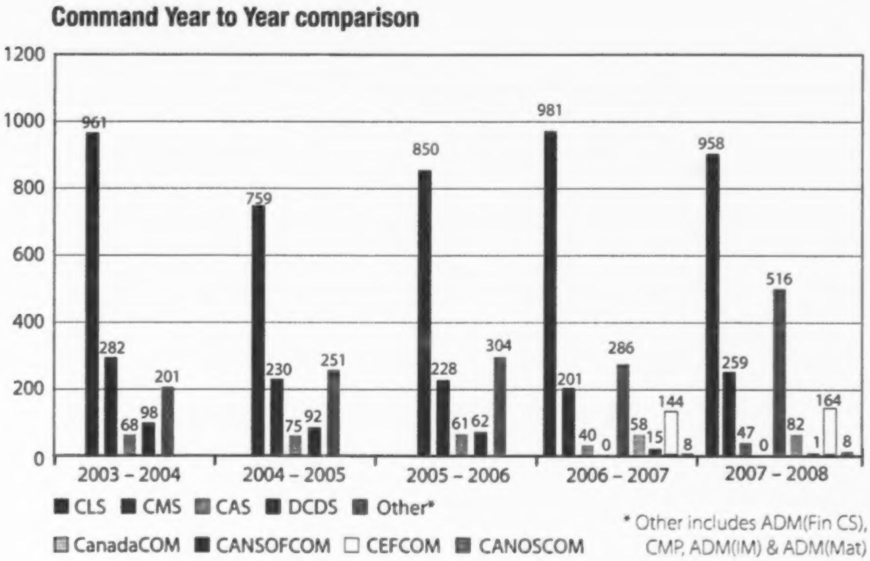
** Master Corporal is not a rank. It is an appointment pursuant to QR&O article 3.08.*

Findings by Charge

Finding	2006-2007		2007-2008	
	#	%	#	%
Guilty	1991	90.42	2412	92.06
Guilty – Special Finding	4	0.18	2	0.08
Guilty of included charges	7	0.32	2	0.08
Not guilty	148	6.72	157	5.99
Charge stayed	40	1.82	41	1.56
Charge not proceeded with	12	0.54	6	0.23
Total	**2202**	**100**	**2620**	**100**

Summary of Charges

NDA Article	Description	2006-2007		2007-2008	
		#	%	#	%
83	Disobedience of lawful command	62	2.82	56	2.14
84	Striking or offering violence to a superior	4	0.18	4	0.15
85	Insubordinate behaviour	63	2.86	82	3.13
86	Quarrels and disturbances	30	1.36	35	1.34
87	Resisting or escaping from arrest or custody	0	0	2	0.08
89	Connivance at desertion	0	0	1	0.04
90	Absence without leave	598	27.16	784	29.92
91	False statement in respect of leave	0	0	0	0
93	Cruel or disgraceful conduct	5	0.23	0	0
95	Abuse of subordinates	17	0.77	13	0.50
97	Drunkenness	156	7.08	156	5.95
98	Malingering or maiming	0	0	0	0
101	Escape from custody	2	0.09	1	0.04
101.1	Failure to comply with conditions	0	0	5	0.19
102	Hindering arrest or confinement or withholding assistance when called on	0	0	0	0
106	Disobedience of captain's orders - ships	0	0	1	0.04
108	Signing inaccurate certificate	1	0.05	0	0
111	Improper driving of vehicles	4	0.18	7	0.27
112	Improper use of vehicles	12	0.54	13	0.50
113	Causing fire	1	0.05	0	0
114	Stealing	18	0.82	16	0.61
115	Receiving	1	0.05	2	0.08
116	Destruction, damage, loss or improper disposal	6	0.27	5	0.19
117	Miscellaneous offences	7	0.32	12	0.46
118	Contempt	1	0.05	0	0
124	Negligent performance of military duty	1	0.05	1	0.04
125	Offences in relation to documents	0	0	3	0.11
127	Injurious or destructive handling of dangerous substances	0	0	5	0.19
128	Conspiracy	1	0.05	0	0



Summary Trial by Rank

Rank	2006-2007		2007-2008	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1513	87	1768	87
Sergeant to Chief Warrant Officer	77	4	75	4
Officer	143	8	192	9
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Charge stayed	40	1.82	41	1.56
Charge not proceeded with	12	0.54	6	0.23
Total	**2202**	**100**	**2620**	**100**

Summary of Charges

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		#	%	#	%
83	Disobedience of lawful command	62	2.82	56	2.14
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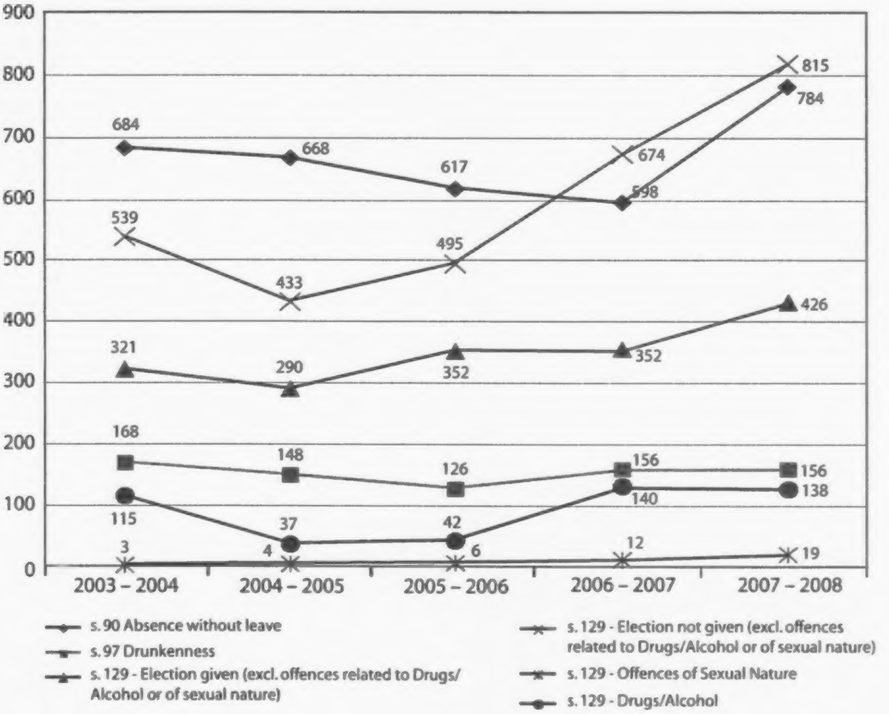
86	Quarrels and disturbances	30	1.36	35	1.34
87	Resisting or escaping from arrest or custody	0	0	2	0.08
89	Connivance at desertion	0	0	1	0.04
90	Absence without leave	598	27.16	784	29.92
91	False statement in respect of leave	0	0	0	0
93	Cruel or disgraceful conduct	5	0.23	0	0
95	Abuse of subordinates	17	0.77	13	0.50
97	Drunkenness	156	7.08	156	5.95
98	Malingering or maiming	0	0	0	0
101	Escape from custody	2	0.09	1	0.04
101.1	Failure to comply with conditions	0	0	5	0.19
102	Hindering arrest or confinement or withholding assistance when called on	0	0	0	0
106	Disobedience of captain's orders - ships	0	0	1	0.04
108	Signing inaccurate certificate	1	0.05	0	0
111	Improper driving of vehicles	4	0.18	7	0.27
112	Improper use of vehicles	12	0.54	13	0.50
113	Causing fire	1	0.05	0	0
114	Stealing	18	0.82	16	0.61
115	Receiving	1	0.05	2	0.08
116	Destruction, damage, loss or improper disposal	6	0.27	5	0.19
117	Miscellaneous offences	7	0.32	12	0.46
118	Contempt	1	0.05	0	0
124	Negligent performance of military duty	1	0.05	1	0.04
125	Offences in relation to documents	0	0	3	0.11
127	Injurious or destructive handling of dangerous substances	0	0	5	0.19
128	Conspiracy	1	0.05	0	0

NDA Article	Description	2006-2007		2007-2008	
		#	%	#	%
129	Conduct to the prejudice of good order and discipline – Offences of sexual nature	12	0.54	19	0.73
129	Conduct to the prejudice of good order and discipline – Drugs/Alcohol	140	6.36	138	5.27
129	Conduct to the prejudice of good order and discipline – election to be tried by CM given (excl. cases reported in 129 - Offences of sexual nature & 129 - Drugs/Alcohol)	352	15.99	426	16.26
129	Conduct to the prejudice of good order and discipline – election to be tried by CM not given (excl. cases reported in 129 - Offences of sexual nature & 129 - Drugs/Alcohol)	674	30.61	815	31.11
130	Service trial of civil offences	34	1.54	20	0.76
Number of charges		**2202**	**100**	**2620**	**100**

Summary of Charges Year to Year Comparison



Authority

	2006-2007		2007-2008	
	#	%	#	%
Delegated Officer	1315	76	1557	77
Commanding Officer	327	19	389	19
Superior Commander	91	5	89	4
Total	**1733**	**100**	**2035**	**100**

Punishments

	2006-2007		2007-2008	
	#	%	#	%
Detention (suspended)	9	0.41	2	0.08
Detention	23	1.05	35	1.33
Reduction in rank	7	0.32	4	0.15
Severe reprimand	5	0.23	1	0.04
Reprimand	52	2.38	57	2.16
Fine	1367	62.48	1611	61.16
Confinement to ship or barracks	458	20.93	630	23.92
Extra work and drill	123	5.62	150	5.69
Stoppage of leave	89	4.07	85	3.23
Caution	55	2.51	59	2.24
Total	**2188**	**100**	**2634**	**100**

Note: More than one type of punishment may be awarded in a sentence.

Requests for Review

	2006-2007		2007-2008	
	#	%	#	%
Requests for review based on finding	6	23	6	20
Requests for review based on sentence	6	23	15	48
Requests for review based on finding & sentence	14	54	10	32
Total	**26**	**100**	**31**	**100**

NDA Article	Description	2006-2007 \#	 %	2007-2008 \#	 %
129	Conduct to the prejudice of good order and discipline – Offences of sexual nature	12	0.54	19	0.73
129	Conduct to the prejudice of good order and discipline – Drugs/Alcohol	140	6.36	138	5.27
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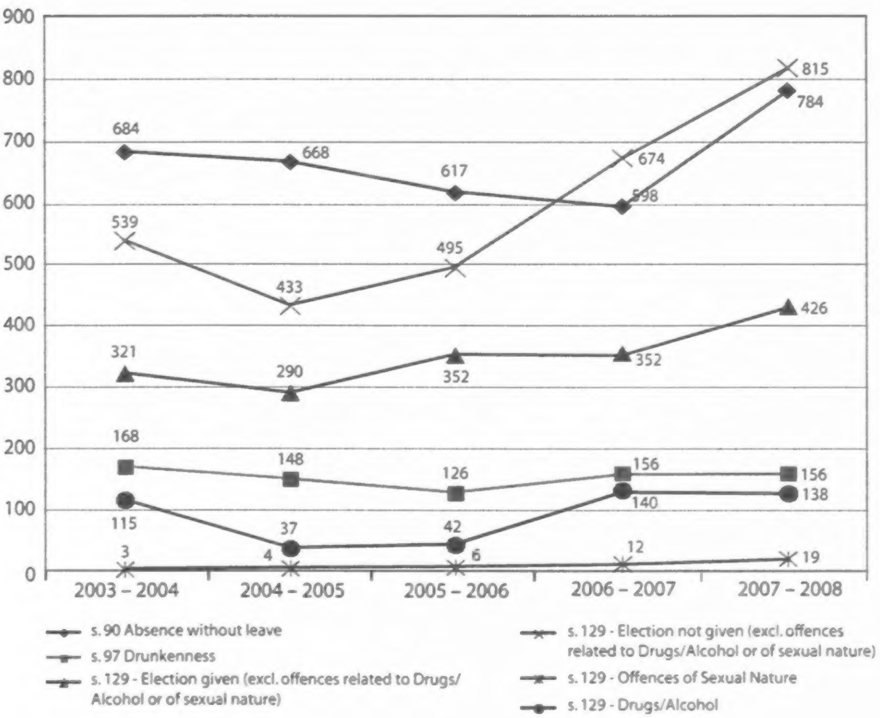
Number of charges		**2202**	**100**	**2620**	**100**

Summary of Charges Year to Year Comparison



Authority

	2006-2007		2007-2008	
	#	%	#	%
Delegated Officer	1315	76	1557	77
Commanding Officer	327	19	389	19
Superior Commander	91	5	89	4
Total	**1733**	**100**	**2035**	**100**

Punishments

	2006-2007		2007-2008	
	#	%	#	%
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Caution	55	2.51	59	2.24
Total	**2188**	**100**	**2634**	**100**

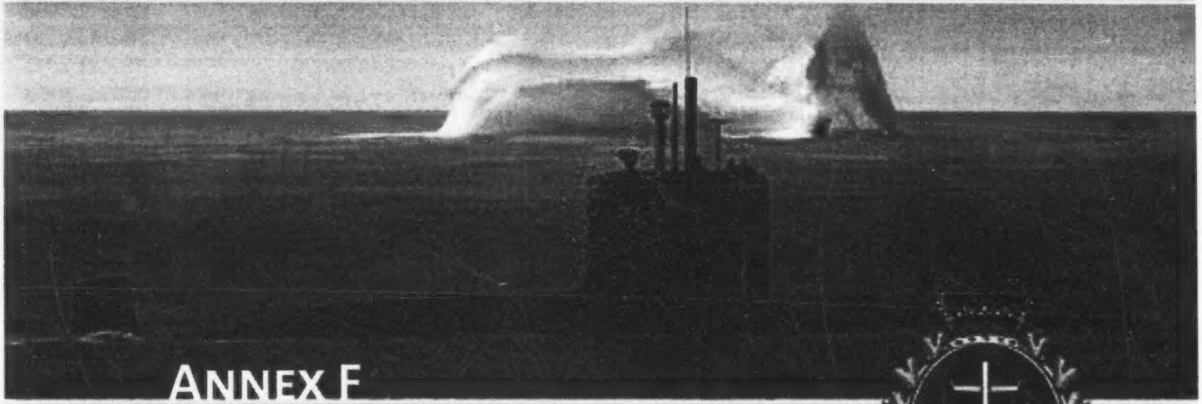
Note: More than one type of punishment may be awarded in a sentence.

Requests for Review

	2006-2007		2007-2008	
	#	%	#	%
Requests for review based on finding	6	23	6	20
Requests for review based on sentence	6	23	15	48
Requests for review based on finding & sentence	14	54	10	32
Total	**26**	**100**	**31**	**100**

Decision of Review Authority

	2006-2007		2007-2008	
	#	%	#	%
Upholds decision	11	42	11	35
Quashes / substitutes findings	11	42	13	42
Substitutes punishment	2	8	7	23
Mitigates / commutes / remits punishment	2	8	0	0
Total	**26**	**100**	**31**	**100**



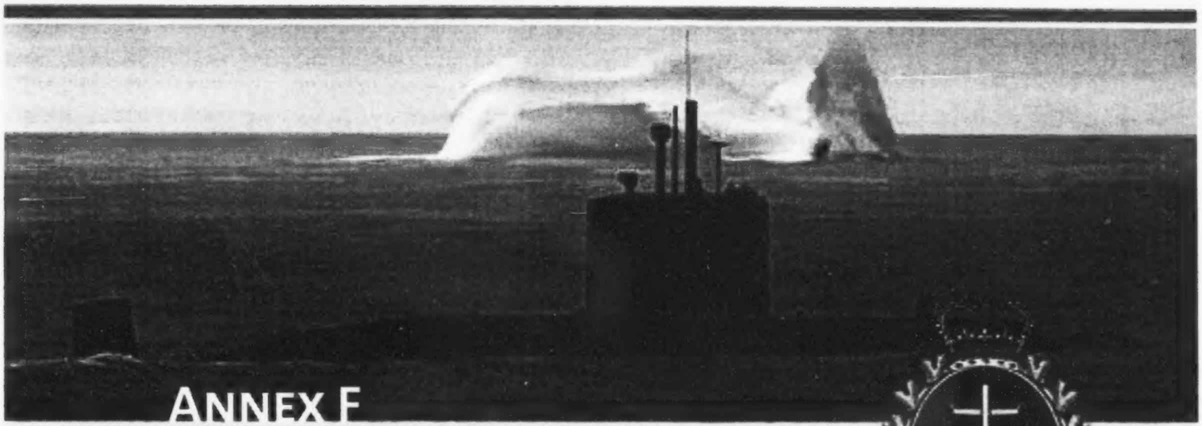
ANNEX F

Contents

COURT MARTIAL YEAR IN REVIEW – STATISTICS: 1 APRIL 2007 – 31 MARCH 2008

Decision of Review Authority

	2006-2007		2007-2008	
	#	%	#	%
Upholds decision	11	42	11	35
Quashes / substitutes findings	11	42	13	42
Substitutes punishment	2	8	7	23
Mitigates / commutes / remits punishment	2	8	0	0
Total	**26**	**100**	**31**	**100**



ANNEX F

Contents

COURT MARTIAL
YEAR IN REVIEW – STATISTICS:
1 APRIL 2007 – 31 MARCH 2008

COURT MARTIAL REPORTING

Period 1 April 2007 – 31 March 2008

Number of Courts Martial

	2006-2007	2007-2008
	67*	78*

** This figure comprises 1 joint trial, which tried 2 accused.*

Courts Martial By Type	2006-2007		2007-2008	
	#	%	#	%
Standing Court Martial	61	91	63	81
Disciplinary Court Martial	6	9	15	19
General Court Martial	0	0	0	0
Special General Court Martial	0	0	0	0
Total	**67**	**100**	**78**	**100**

Summary of Charges

NDA Article	Description	2006-2007	2007-2008
74(*c*)	Failed to use the utmost exertion to carry order into effect	0	1
83	Disobedience of lawful command	9	11
84	Striking or offering violence to a superior officer	1	4
85	Insubordinate behaviour	1	6
86	Quarrels and disturbances	4	3
87(*c*)	Resisted an escort while being apprehended	0	1
87(*d*)	Broke out of barracks	1	1
88	Desertion	1	0
90	Absent without leave	16	10
93	Cruel or disgraceful conduct	1	5
95	Abuse of subordinates	7	5
96	False accusations	1	0
97	Drunkenness	11	10
101.1	Failure to comply with conditions	0	1
111(1)(*c*)	Improper driving of vehicle	0	1
112(*a*)	Unauthorized use of a CF vehicle	0	1
113	Causing fires	1	0
114	Stealing	3	10
115	Receiving	1	0
116	Destruction, damage, loss or improper disposal	3	3
117(*b*)	Improperly accepting compensation	0	5
117(*f*)	An act of a fraudulent nature	16	14
118(2)(*e*)	Caused a disturbance at Summary trial	0	1

NDA Article	Description	2006-2007	2007-2008
118.1	Failure to appear or attend	0	1
124	Negligent performance of a military duty	1	0
125(a)	Wilfully (or negligently) made a false entry	5	43
129	An act to the prejudice of good order and discipline	13	16
129	Conduct to the prejudice of good order and discipline	18	24
129	Neglect to the prejudice of good order and discipline	3	1
130(4(1) CDSA)*	Possession of substances	7	4
130(5(1) CDSA)*	Trafficking in substance	8	19
130(7 CDSA)*	Production of substance	1	0
130(80(d) FAA)**	Wilfully signed a false certificate	0	5
130(86(1)CC)***	Careless use of a firearm	2	2
130(87 CC)	Pointing a firearm	2	1
130(91(2)CC)	Unauthorized possession of prohibited weapon	3	0
130(140(1)CC)	Public mischief	0	1
130(153 CC)	Sexual exploitation	1	0
130(163.1(4.1)) CC)	Accessing child pornography	0	3
130(163.1(4) CC)	Possession of child pornography	4	9
130(173(1) CC)	Committed an indecent act	1	0
130(264(1) CC)	Criminal harassment	8	0
130(266 CC)	Assault	10	8

NDA Article	Description	2006-2007	2007-2008
130(267(*a*) CC)	Assault with a weapon	0	5
130(267(*b*) CC)	Assault causing bodily harm	4	3
130(268 CC)	Aggravated assault	2	0
130(269 CC)	Unlawfully causing bodily harm	1	0
130(270(1) CC)	Assaulting a peace officer	0	2
130(271 CC)	Sexual assault	10	8
130(346(1.1)(*b*) CC)	Extortion	1	0
130(362(1)(*a*) CC)	False pretences	2	2
130(366(1) CC)	Forgery	4	0
130(367 CC)	Forgery	0	14
130(368 CC)	Uttering a forged document	5	11
130(380(1) CC)	Fraud	1	13
130(464 CC)	Counselling an offence that is not committed	1	0
Total Offences		**195**	**288**

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.

[*] *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 [CDSA].

[**] *Financial Administrative Act*, R.S.C. 1985, c. F-11 [FAA].

[***] *Criminal Code*, R.S.C. 1985, c. C-46 [CC].

Disposition by Case

	2006-2007		2007-2008	
	#	%	#	%
Found/Plead Guilty to at least one charge	57	84	61	78
Not Guilty of all charges	7	10	12	16
Stay of Proceedings on all charges	1	2	3	4
Withdrawal of all charges at court martial	3	4	1	1
Other (SCM is without jurisdiction)	0	0	1	1
Total	**68**	**100**	**78**	**100**

Sentences

Punishment Type	2006-2007	2007-2008
Dismissal	0	1
Imprisonment	8	10
Detention	3	7
Reduction in Rank	3	2
Forfeiture of Seniority	1	0
Severe Reprimand	9	16
Reprimand	19	18
Fine	49	44
Minor punishments: Confined to Barracks	1	1
Total	93	99

Note: More than one type of punishment can be included in a sentence.

Language of Courts Martial

	2006-2007		2007-2008	
	#	%	#	%
English	54	81	71	91
French	13	19	7	9
Total	**67**	**100**	**78**	**100**

Courts Martial By Command

Command	2006-2007		2007-2008	
	#	%	#	%
National Defence Headquarters (NDHQ)	10	15	0	0
Vice Chief of the Defence Staff (VCDS)	0	0	1	1
Associate Deputy Minister (Finance and Corporate Services) (ADM (FIN CS))	0	0	2	3
Chief of the Maritime Staff (CMS)	11	17	14	18
Chief of the Land Staff (CLS)	30	45	38	49
Chief of the Air Staff (CAS)	11	17	9	12
Canadian Defence Academy (CDA)	1	1	0	0
Canada Command (CanadaCOM)	1	1	0	0
Canadian Expeditionary Force Command (CEFCOM)	2	3	1	1
Canadian Operational Support Command (CANOSCOM)	1	1	1	1
Chief of Military Personnel (CMP)	0	0	12	15
Total	**67**	**100**	**78**	**100**

Note: The Deputy Chief of the Defence Staff organization was disbanded in 2006. Units that were belonging to the Deputy Chief of the Defence Staff were reallocated to the newly created commands: Canada Command, Canadian Expeditionary Force Command, Canadian Operational Support Command and Canadian Special Operations Forces Command.

Courts Martial By Rank

Rank	2006-2007	2007-2008
Private and Corporal (includes Master-Corporal*)	47	48
Sergeant to Chief Warrant Officer	8	14
Officer	13	16
Other	0	0
Total	**68**	**78**

*Master Corporal is not a rank. It is an appointment pursuant to QR&O article 3.08.

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APPEALS
YEAR IN REVIEW – STATISTICS:
1 APRIL 2007 – 31 MARCH 2008

Courts Martial By Rank

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Private and Corporal (includes Master-Corporal*)	47	48
Sergeant to Chief Warrant Officer	8	14
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APPEALS
YEAR IN REVIEW – STATISTICS:
1 APRIL 2007 – 31 MARCH 2008

APPEALS REPORTING

Period 1 April 2007 - 31 March 2008

Appeals Heard

Court	2006-2007	2007-2008
Court Martial Appeal Court of Canada	3	7
Supreme Court of Canada	0	0
Total	3	7

Appeals by Party

Status of Appellant	2006-2007	2007-2008
Appeals by Crown	0	0
Appeals by Offender	3	7
Total	3	7

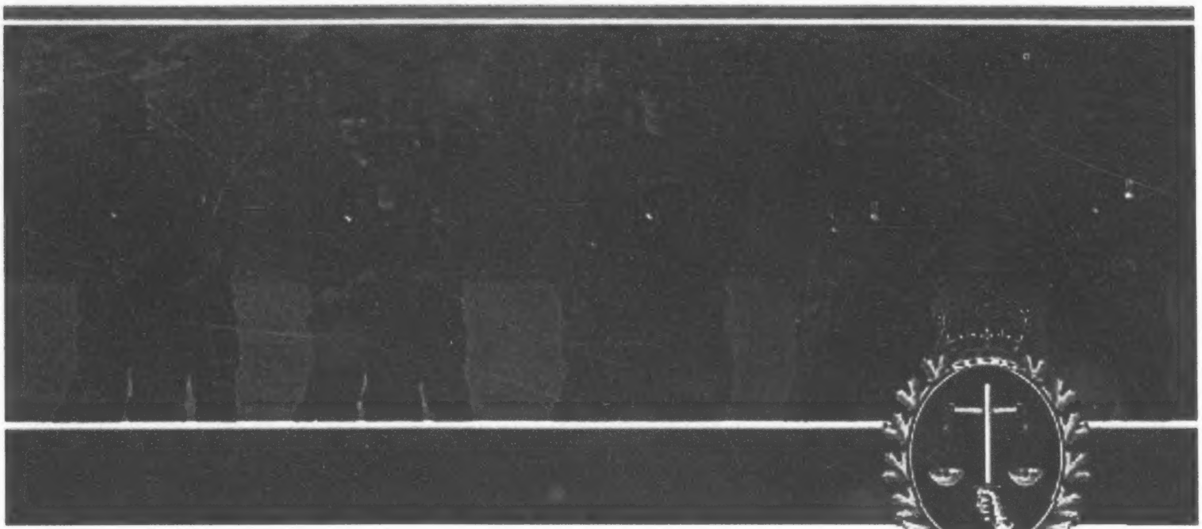
Nature of Appeal

Grounds	2006-2007	2007-2008
Finding	3	2
Sentence (severity and/or legality)	0	1
Finding and sentence	0	4
Cross-Appeal	2	0
Total	5	7

Disposition

	2006-2007	2007-2008
Upheld trial decision	1	6
Stay of Proceedings	1	0
Overturned trial decision in whole or part	1	1
Total	3	7

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.



GLOSSARY OF TERMS AND ABBREVIATIONS

ADM (Fin CS)	Assistant Deputy Minister (Finance and Corporate Services)
ADM (IM)	Assistant Deputy Minister (Information Management)
ADM (Mat)	Assistant Deputy Minister (Materiel)
AJAG	Assistant Judge Advocate General
AJAG CWO	Assistant Judge Advocate General Chief Warrant Officer
AMJC	Administration of Military Justice Committee
AS	Able Seaman
AWOL	Absence without leave
CA	Court of Appeal
Canada COM	Canada Command
CANFORGEN	Canadian Forces General message
CANOSCOM	Canadian Operational Support Command
CANSOFCOM	Canadian Special Operations Forces Command
Capt	Captain
CAS	Chief of the Air Staff
CC	Criminal Code
CDA	Canadian Defence Academy
CDS	Chief of the Defence Staff
CDSA	Controlled Drugs and Substances Act
CEFCOM	Canadian Expeditionary Force Command
CF	Canadian Forces
CFLRS	Canadian Forces Leadership Recruit School
CFMLC	Canadian Forces Military Law Centre
CFNIS	Canadian Forces National Investigation Service
CIMP	Comprehensive Information Management Program
CLS	Chief of the Land Staff
CM	Court Martial
CMA	Court Martial Administrator
CMAC	Court Martial Appeal Court of Canada
CMJ	Chief Military Judge
CMP	Chief of Military Personnel
CMPS	Canadian Military Prosecution Service
CMRS	Court Martial Reporting System
CMS	Chief of the Maritime Staff
CO	Commanding Officer
COS/JAG	Chief of Staff/Judge Advocate General
Cpl	Corporal
CP01	Chief Petty Officer 1st Class
CSD	Code of Service Discipline
CWO	Chief Warrant Officer
DCS	Defence Counsel Services
DCM	Disciplinary Courts Martial
DDCS	Director of Defence Counsel Services
DDMP	Deputy Director of Military Prosecutions
DJA	Deputy Judge Advocate

DJAG	Deputy Judge Advocate General
DJAG/MJ&AL	Deputy Judge Advocate General/Military Justice and Administrative Law
DJAG/Ops	Deputy Judge Advocate General/Operations
DJAG/Reg Svcs	Deputy Judge Advocate General/Regional Services
DLAW/Admin Law	Directorate of Law/Administrative Law
DLAW/CBP&E	Directorate of Law/Compensation, Benefits, Pensions and Estates
DLAW/MIL PER	Directorate of Law/Military Personnel
DLAW/MJP&R	Directorate of Law/Military Justice Policy and Research
DLAW/OPS	Directorate of Law/Operations
DLAW/T	Directorate of Law/Training
DMP	Director of Military Prosecutions
DMPORA	Director Military Personnel Operational Research and Analysis
DNA	Deoxyribonucleic acid
DND	Department of National Defence
DND/CF LA	Department of National Defence/ Canadian Forces Legal Advisor
D Pers/AR	Directorate of Personnel/Applied Research
FAA	Financial Administrative Act
FCA	Federal Court of Appeal
FCC	Federal Court of Canada
GCM	General Court Martial
Gnr	Gunner
JAG	Judge Advocate General
JAGNet	JAG Information Management System
LCol	Lieutenant-Colonel
LFCA TC	Land Force Central Area Training Centre
LFQA TC	Land Force Québec Area Training Centre
LFWA TC	Land Force Western Area Training Centre
LOIT	Legal Officer Intermediate Training
LS	Leading Seaman
Mcpl	Master Corporal
Maj	Major
MS	Master Seaman
MILPERSCOM	Military Personnel Command
MJCC	Military Judges Compensation Committee
MND	Minister of National Defence
NCM	Non-Commissioned member
NDA	National Defence Act
NDHQ	National Defence Headquarters
NORAD	North American Aerospace Defend command
Ocdt	Officer Cadet
OMLE	Office of Military Legal Education
OPME	Officer Professional Military Education
POCT	Presiding Officer Certification Training
PORT	Presiding Officer Re-certification Training
Q.C	Queen's Counsel

QR&O	Queen's Regulations and Orders for the Canadian Forces
RDP	Record of Disciplinary Proceedings
RMP	Regional Military Prosecutor
SCC	Supreme Court of Canada
SCM	Standing Courts Martial
SGCM	Special General Court Martial
Sgt	Sergeant
SJS LA	Strategic Joint Staff Legal Advisor
ST	Summary Trial
URDP	Unit Registries of Disciplinary Proceedings
VCDS	Vice Chief of the Defence Staff